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ERRATA.

Section 416, line 1, for *body* read *copy.*
Section 441, line 2 from bottom, for *so* read *to.*
Section 504, subdivision first, line 5, after *elector* insert *or when any such qualified elector.*
Section 504, sub. second, line 3, from end of subdivision, for *the applicant* read *such applicant.*
Section 541, line 3, for *no* read *on*, and insert *strictly* after *being.*
Section 553, line 2, for *or* read *on.*
Section 555, line 3, for *another* read *any other.*
Section 557, line 3, insert *not* after *is.*
Section 571, last line of oath, for *voted previously* read *previously voted:*
Section 575, line 2, for *the vote* read *to vote.*
Section 575, line 3, insert *to* before *him.*
Section 602, line 3, for *office* read *officer.*
Section 651, sub. sixth, line 10, omit *where.*
Section 651, sub. 16, line 11, after *from* insert said *districts from.*
Section 672, line 1, for *present* read *parent.*
Section 755, line 7, for *remembered* read *reimbursed.*
Section 812, line 2, for *it* read *is.*
Section 902, last line, after *able* insert *bodied.*
Section 947, next to last line, for *with* read *to.*
Section 963, line 3, after *refuses* insert *either.*
Section 1153, line 5, for *if* read *of.*
Section 1153, line 6, for *contagious* read *contagion.*
Section 1162, line 3, omit *over.*
Section 1265, last line, for *rate* read *date.*
Section 1266, line 4 from bottom, omit *no.*
Section 1282, line 4, omit the comma after *pharmacy.*
Section 1285, at end, *villages of over* should read *villages of* [*not*] *over.*
Section 1288, next to last line, for *of* read *in.*
Section 1295, line 5, for *digitates* read *digitalis.*
Section 1301, sub. third, line 4, for *a* read *one.*
Section 1428, next to last line, after *be* insert *made.*
Section 1463, line 9, for *said* read *such.*
Section 1463, sub. second, line 7, omit *same.*
Section 1478, line 3, before *agent* insert *the.*
Section 1501, line 2, for *of* read *in.*
Section 1535, line 5, for *thereof* read *thereto.*
Section 1551, last line, for *by* read *of.*
Section 1552, line 2, insert *of* after *or.*
Section 1553, line 3, for *deed to* read *deed of.*
Section 1556, line 1, for *provided* read *proved.*
Section 1759, sub. 16, line 2, for *tax* read *law.*
Section 1760, line 7, omit *to.*
Section 1763, line 3, for *applications* read *appliances.*
Section 1775, line 3 from end, omit the second *be.*
Section 1776, line 4, for *where* read *when.*
Section 2032, next to last line, for *the relate* read *they relate.*

Section 2142, last line, for *distance* read *distant*.
Section 2152, next to last paragraph, after *less* insert *than*.
Section 2207, next to last line, for *of* read *or*.
Section 2208, line 6, omit *and*.
Section 2230, sub. 13, line 4, after *sums* insert *paid*.
Section 2230, sub. 35, line 4, for *place* read *peace*.
Section 2232, line 11, for *each* read *such*.
Section 2232, line 14, for *each* read *such*.
Section 2599, line 13, for *call* read *called*.
Section 2600, line 2, for *if* read *of*.
Section 2649, last line, after *corporation* insert *shall be extended*.
Section 2650, line 4 from bottom, for *the* read *this*.
Section 2666, sub. 3, line 3, *their* should read [*other*.]
Section 2723, line 11, for *interested* read *interest*.
Section 2951, sub. 1, after *court* insert *of*.
Section 3100, next to last line, for *subsequent* read *subsequently*.
Section 3101, line 13, period after *claim* and cap. W.
Section 3203, next to last line, before *must* insert *he*.
Section 3365, line 3, omit *to*.
Section 3386, sub. 1, line 2, after *that* insert *it*.
Section 3387, line 10, for *return* read *retain*.
Section 3391, next to last line, for *make* read *take*.
Section 3398, next to last line, for *effected* read *effectual*.
Section 3602, line 5, after *when* insert *the*.
Section 3830, at top of page, for *unjust* read *impost*.
Section 3866, line 5, for *reasons* read *purposes*.
Section 3944, line 3, for *and* read *are*.
Section 3952, next to last line, omit *days*.
Section 3971, next to last line, after *must* insert *be*.
Section 4009, line 2, after *to* insert *its*.
Section 4143, line 9, for *any* read *a*.
Section 4231, line 4, for *reserved* read *reversed*.
Section 4255, line 5, for *a court* read *the court*.
Section 4280, line 3, after *deliver* insert *it*.
Section 4288, sub. 3, last line, for *tendency* read *tending*.
Section 4297, line 17, after *hearing* insert *as*.
Section 4297, line 4 from end, for *an* read *any*.
Section 4305, line 12, period after *undertaking* and cap. *s*.
Section 4457, line 10, for *stated* read *stayed*.
Section 4478, line 2, omit *party*.
Section 4480, sub. 3, line 8, insert *or* after *reserved*.
Section 4480, subdivision 6, line 4, after *earns* insert *his*.
Section 4482, sub. 3, line 5, for *or* read *and*.
Section 4542, paragraph 4, line 2, after *party* insert *is*.
Section 4597, line 2, for *instrument* read *investment*.
Section 4704, sub. 3, line 9, for *receive* read *recover*.
Section 4842, line 7, for *if* read *is*.
Section 4842, line 8, for *if* read *is*.
Section 4893, line 2 from bottom, after *bring* insert *him*.
Section 4915, line 3 from bottom, for *sufficient* read *insufficient*.
Section 5098, line 4 from end, for *and* read *an*.
Section 5167, line 3, after *of* insert *attachment*.
Section 5191, last line, *county* should read [*district*].
Section 5226, next to last line, after *in* insert *evidence*.
Section 5227, last line, for *sided* read *sides*.
Section 5298, line 1, for *provision* read *petition*.
Section 5311, line 1, for *and* read *all*.
Section 5467, line 4, for *on* read *or*.

Section 5599, line 5, for *a* read *or*.
Section 5628, line 5 from end, for *recovered* read *reversed*.
Section 5644, line 4, for *approving* read *appointing*.
Section 5705, line 1, for *decrees* read *degrees*, and for *completed* read *computed*.
Section 5788, line 6, for *depositing* read *disposing of*.
Section 5876, line 7, for *unwillingness* read *willingness*.
Section 5882, line 13, for *of the* read *to the*.
Section 5899, line 1, for *distributed* read *disturbed*.
Section 5918, line 3, for *judiciary* read *fiduciary*.
Section 6077, line 2, for *parties* read *party*.
Section 6304, line 2, for *officer* read *office*.
Section 6308, line 2, after *that* omit *the*.
Section 6411, line 4, for *adopted* read *approved*.
Section 6570, last line, for *or* read *and*.
Section 6584, line 2, after *carries* insert *him*.
Section 6713, line 2, omit *so*.
Section 6731, line 4, for *chemicals* read *chemical*.
Section 6741, line 5, after *under* omit *the*.
Section 6768, last line, for *for* read *to*.
Section 6794, line 1, for *provided* read *provides*.
Section 6860, line 1, *person* should read [*physician*.]
Section 6867, line 1, for *brand* read *brands*.
Section 6882, line 2, for *head* read *herd*.
Section 6931, line 4, after *or* insert *while*.
Section 6975, sub. 2, line 1, for *part* read *portion*.
Section 6976, line 3, after *over* insert *the same*.
Section 6977, line 2, for *included* read *includes*.
Section 7028, line 3, for *letters patent* read *letters-patent*.
Section 7028, line 16, omit *action* before *real*.
Section 7028, line 21, for *a lien* read *alien*.
Section 7037, line 2, for *from* read *for*.
Section 7040, last line, omit *fine* before *imprisonment*.
Section 7080, insert *or fear* at end of second line.
Section 7086, line 3, insert *other* before *property*.
Section 7090, line 4, for *convenience* read *connivance*.
Section 7093, sub. 1, line 1, for *such* read *any*.
Section 7151, last line, for *following* read *preceding*.
Section 7154, line 1, for *the* read *to be*.
Section 7158, sub. 5, line 4, for *part* read *park*.
Section 7163, line 1, for *or* read *and*.
Section 7208, line 3 from bottom, omit last *is*.
Section 7400, next to last line, for *aids* read *aiders*.
Section 7401, line 3, for *aids* read *aiders*.
Section 7425, [*in office*.] should be added to section.
Section 7431, line 5, omit *and*.
Section 7553, line 6, for *an* read *any*.
Section 7565, line 2, for *on* read *upon*.
Section 7575, line 3, for *prosecution* read *prosecutor*.
Section 7609, sub. 7, last line, for *challenged* read *challenging*.
Section 7833, sub. 1, line 1, after *fact* insert *is*.
Section 7855, sub. 2, line 1, for *the counsel* read *other counsel*.
Section 7869, last line, for *be* read *is*.
Section 7915, line 3, after *must* insert *then*.
Section 7996, sub. 3, line 2, for *a* read *the*.
Section 8076, line 3, for *transmitted* read *remitted*.
Section 8126, line 6, for *the minutes* read *its minutes*.
Section 8178, line 4, for *or* read *on*.

Section 8186, line 5, after *his* insert *making an.*
Section 8188, line 3, after *or* insert *of.*
Section 8314, line 1, for *entering* read *entitling.*
Section 8324, line 9, after *on* insert *the.*
Section 8346, line 5, after *him* omit *to.*
Section 8358, line 1, after *person* insert *who.*
Section 8384, line 5, before *inquisition* insert *the.*
Section 8504, line 9, for *such* read *each.*
Section 8506, line 4, for *and* read *or.*
Section 8544, line 4, for *there* read *then.*

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THE

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REVISED STATUTES

470
970

OF

IDAHO TERRITORY.

ENACTED AT THE

FOURTEENTH SESSION OF THE LEGISLATIVE
ASSEMBLY.

IN FORCE JUNE 1, 1887.

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INTRODUCTION.

The Thirteenth Session of the Legislative Assembly, by an Act, approved February 5, 1885, authorized the Governor of the Territory to appoint a commission of three persons to revise, simplify, arrange and consolidate all statutes of the Territory, which should be in force at the time of the final report of the Commission.

Before they had fairly entered upon their labors, his colleagues upon the Commission were, in common with their fellow citizens, called upon to mourn the death of the Honorable Henry E. Prickett, late a Justice of the Supreme Court of the Territory, and a member of the Commission by the appointment of Governor Bunn. In the death of Judge Prickett the people of the Territory were deprived of the benefit of his profound learning, his long experience and great familiarity with the Statutes, and his patient and untiring industry; which, coupled with his acknowledged singleness and honesty of purpose, went to make up a character in which the public reposed this, and many other trusts, with unquestioning confidence.

In the history of the legislation of the Territory, there has been but one former revision or compilation of the Statutes, that of 1875, by Edward Jay Curtis, Esq., which, though gratuitously undertaken, was executed in so masterly a manner that it at once commanded, if not an adequate, a substantial acknowledgment from a grateful people.

The work of the present commission, which will hereafter be known as the Revised Statutes of Idaho, is divided into four parts, designated, for convenience of classification and reference, respectively, the Political Code, which contains the enactments relating to the machinery of government as far as the same is regulated by Territorial legislation; the Civil Code, relating to personal and private rights and private property; the Code of Civil Procedure, regulating the entire subject of civil procedure in all the Courts; and the Penal Code, which embraces crimes, criminal procedure, the Territorial prison and county jails.

The several codes are divided into Parts, Titles, Chapters, Articles and Sections.

Two methods of numbering the sections were presented to us,—First, to number the entire work in one series; second, to form a distinct series of the sections of each chapter. The former has, among other advantages, the great convenience of enabling us to index the work by sections and to cite any part of it without naming Code, Part, Title or Chapter.

By the other plan, chapters and sections may be added from time to time without confusion, but every reference would have to name the Code, Title, and Chapter as well as the Section.

We have, after considering the advantages and disadvantages of each, adopted the former plan, and at the same time endeavored to secure some of the benefits of the latter by leaving blank numbers between each chapter and title, so that, with a little care, amendments and additions may be made without confusion.

The Legislature by Joint Resolution, passed on the day of its adjournment, directed that in preparing the Revised Statutes and the other general laws passed at the Fourteenth Session, for publication, such other general laws, when practicable, should be inserted in their proper places and the sections numbered consecutively with the sections of the Revised Statutes, preserving the original numbers, when necessary, in parentheses; and that, in printing, all parts of the Revised Statutes clearly repealed, should be omitted. All the general laws passed at the Fourteenth Session of the Legislative Assembly have been inserted in proper Titles of the Revised Statutes, so that the latter, when they go into operation on the first day of June next, will embrace all the general laws of the Territory. All parts of the Revised Statutes repealed by unmistakable reference, have been omitted from the printed volume; but as many of the acts of the last session made no reference to the Revised Statutes, but concluded with the general repealing clause, it was beyond the power of any commission to reconcile contradictions by further omissions. These contradictions cannot properly be charged to the Commission. They can only be avoided in the future by making proposed legislation take the form of amendments or additions to particular Chapters of the Statutes, and re-enacting in full, as amended, any section or sections that it is proposed to amend.

Notwithstanding the failure of the recent session to designate, in many instances, just what parts of the Revision they intended to repeal, and the unavoidable discrepancies that result from such failure, the people are indebted to that session for many improvements in the laws, which the Commission did not feel authorized to make.

As directed by the Legislature, the Declaration of Independence, the Constitution of the United States, and such parts of Title Twenty-three of the Revised Statutes of the United States as are applicable to the Territory, commonly known as the "Organic Act," with the subsequent legislation of Congress affecting the same, have been prefixed to the Statutes of the Territory; and it is believed that this compilation of the "Organic Act" will be found more complete than any heretofore made.

RICHARD Z. JOHNSON,
JAMES H. BEATTY,
JOHN S. GRAY,
Commissioners.

BOISE CITY, *March* 1, 1887.

DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4TH, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness; That to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies, without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally, the Forms of our Government:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions, we have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the United States of America, in General Congress Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to Levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

NEW HAMPSHIRE.

JOSIAH BARTLETT, WM. WHIPPLE.
MATTHEW THORNTON,

MASSACHUSETTS BAY.

SAML ADAMS, JOHN ADAMS,
ROBT TREAT PAINE, ELDRIDGE GERRY,

RHODE ISLAND.

STEP. HOPKINS, WILLIAM ELLERY.

CONNECTICUT.

ROGER SHERMAN, SAM'L. HUNTINGTON,
WM. WILLIAMS, OLIVER WOLCOTT.

NEW YORK.

WM. FLOYD, PHIL. LIVINGSTON,
FRANS. LEWIS, LEWIS MORRIS.

NEW JERSEY.

RICHD. STOCKTON, JNO. WITHERSPOON,
FRANS HOPKINSON, JOHN HART.
ABRA. CLARK,

PENNSYLVANIA.

ROBT. MORRIS, BENJAMIN RUSH,
BENJA. FRANKLIN, JOHN MORTON.
GEO. CLYMER, JAS. SMITH,
GEO. TAYLOR, JAMES WILSON.
GEO. ROSS.

DELAWARE.

CÆSAR RODNEY, GEO. READ.
THO. M'KEAN,

MARYLAND.

Samuel Chase,	Wm. Paca,
Thos. Stone,	Charles Carrol of Carrollton.

VIRGINIA.

George Wythe,	Richard Henry Lee,
Th. Jefferson,	Benja. Harrison,
Thos. Nelson, Jr.,	Francis Lightfoot Lee.
Carter Braxton,	

NORTH CAROLINA.

Wm. Hooper,	Joseph Hewes.
John Penn,	

SOUTH CAROLINA.

Edward Rutledge,	Thos. Hayward, Junr.,
Thomas Lynch, Junr.,	Arthur Middleton.

GEORGIA.

Button Gwinnett,	Lyman Hall.
Geo. Walton,	

CONSTITUTION OF THE UNITED STATES.

1877.

Preamble.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

Legislative powers, where vested.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

House of Representatives, how constituted.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Qualifications of a representative.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct taxes how apportioned.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives, shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Census.

Vacancies to be filled.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

Power of choosing officers; and of impeachment.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole Power of Impeachment.

Senators, how and by whom chosen.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

How classified.

Vacancies, how filled.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature which shall then fill such Vacancies.

Qualifications of a senator.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

President of senate, his right to vote.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Officers of senate, how chosen.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

Power to try impeachments.

Chief justice to preside when.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Sentence.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualification to hold and enjoy any Office of Honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Times etc of holding elections.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to places of chusing Senators.

One session in each year.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Membership.

Quorum.

Adjournments.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Rules; power to punish or expel.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Journal

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts

Yeas and nays.

as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Time of adjournment, limited, unless, etc.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Compensation.

SECTION 6. The Senators and Representatives shall receive a Compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Privileges.

Disqualification in certain cases.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

House to originate all revenue bills.

SECTION 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Veto.

Bill may be passed by two-thirds of each house notwithstanding.

Bill not returned in ten days.

Joint resolutions to be presented to the president for approval.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Powers of congress.

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings; —And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Provision as to migration or importation of certain persons.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Habeas corpus.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Bills of attainder, etc.

No Bill of Attainder or ex post facto Law shall be passed.

Taxes, how apportioned.

No Capitation, or other direct. Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No export duty.

No Tax or Duty shall be laid on Articles exported from any State.

No commercial preferences.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No money drawn from treasury unless appropriated by law.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law: and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No title of nobility.

Officers not to receive presents.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

States prohibited from the exercise of certain powers.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE II.

President and vice president: their term of office.

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows

Electors of president and vice president; number and how appointed.

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an office of Trust or Profit under the United States, shall be appointed an Elector.

[Here followed provisions as to the mode of casting the electoral votes, which are superseded by the Twelfth Amendment.]

Electors to vote on the same day.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

Qualifications of the president.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

On whom his duties devolve in case of his removal, death or inability.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Presidents compensation.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

His oath

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly "swear [or affirm] that I will faithfully execute the Office "of President of the United States, and will to the best of "my Ability, preserve, protect, and defend the Constitution "of the United States.

President to be commander-in-chief.

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He may require opinion of cabinet officers.

Pardoning power.

Treaty making power.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Nomination of certain officers.

When president may fill vancies.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Message to congress.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in case of Disagreement between them, with Respect to Time of Adjournment, he may adjourn them to such Time as he

May convene and in some cases adjourn congress.

Shall receive ambassadors.

shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

Forfeiture of offices for crime.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

Judicial power, where vested.

Tenure of office.

Compensation.

SECTION 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Extent of judicial power.

See amendment XI.

SECTION 2. The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers, and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Original jurisdiction of Supreme Court.

Appellate.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Trial by jury of criminal prosecutions.

Place of trial.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Treason defined.

Proof.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

Its punishment.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV.

Each State to give credit to the records of every other.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general

Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Privileges of citizens of each State.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Fugitives from justice to be delivered up.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Persons held to service, having escaped to be delivered up.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Admission of new States.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Power of Congress over territory and other property of the United States.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Republican form of government guaranteed. Each State to be protected.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

Constitution, how amended.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which

Limitation of amendments.

may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

Confirmation of old obligations of the United States.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the

Supremacy of Constitution treaties, and laws of the United States.

United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, Anything in the Constitution or Laws of any State to the Contrary notwithstanding.

Oath to support Constitution, by whom taken.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

No religious test.

ARTICLE VII.

What ratification sufficient to establish this constitution.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names,

Go: WASHINGTON, Presidt and Deputy from Virginia.

NEW HAMPSHIRE.
John Langdon, Nicholas Gilman.
MASSACHUSETTS.
Nathaniel Gorham, Rufus King.
CONNECTICUT.
Wm. Saml. Johnson, Roger Sherman.
NEW YORK.
Alexander Hamilton.
NEW JERSEY.
Wil: Livingston, David Brearley.
Wm. Patterson, Jona. Dayton.
PENNSYLVANIA.
B. Franklin Thomas Mifflin.
Robt. Morris, Geo: Clymer,
Tho: Fitzsimons, Jared Ingersoll,
James Wilson, Gouv: Morris.
DELAWARE.
Geo: Read, Richard Bassett,
John Dickenson, Gunning Bedford, Jun'r.
Jaco: Broom.
MARYLAND.
James McHenry, Danl. Carroll.
Dan. of St. Tho: Jenifer.
VIRGINIA.
John Blair, James Madison, Jr.
NORTH CAROLINA.
Wm. Blount, Hu. Williamson,
Richd. Dobbs, Spaight.
SOUTH CAROLINA.
J. Rutledge, Charles Pinckney.
Charles Cotesworth Pinckney, Peirce Butler.
GEORGIA.
William Few, Abr. Baldwin.

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES

IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

Proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.

(ARTICLE I.)

Religious establishment prohibited. Freedom of speech and of the press, and right of petition

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(ARTICLE II.)

Right to keep and bear arms.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(ARTICLE III.)

Quartering soldiers in private houses.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

(ARTICLE IV.)

Right of search and seizure regulated.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(ARTICLE V.)

Criminal prosecutions, trials and punishments.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Taking private property for public use.

(ARTICLE VI.)

Further provisions respecting criminal prosecutions.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have Compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

(ARTICLE VII.)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Right of trial by jury.

(ARTICLE VIII.)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Excessive bail or punishments.

(ARTICLE IX.)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights retained by the people.

(ARTICLE X.)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Powers not delegated to the United States.

(ARTICLE XI.)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Suits against a state by an individual.

(ARTICLE XII.)

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next fol-

Manner of choosing president and vice president.

lowing, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President: a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

Slavery abolished.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

Citizenship defined.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

Privileges of citizens.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Apportionment of representatives in congress

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Persons who have broken an official oath of allegiance, by aiding in rebellion, disqualified to hold office.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Public debt obligatory.

Claims for losses by emancipation of slaves.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

REVISED STATUTES
OF THE
UNITED STATES.

TITLE XXIII.—The Territories.

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1891. Constitution and laws of United States made applicable to all the Territories.
1893 Rules for the government of penitentiaries
1894. Payment of Marshal, &c., and of expenses of subsistence, &c., of offenders.
1895. Imprisonment in penitentiaries.
Public Schools.

Rights of Indians in person and property not impaired by this title etc. Boundaries etc.

SEC. 1839. Nothing in this Title shall be construed to impair the rights of person or property pertaining to the Indians in any Territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the Territorial limits, or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any Territory now or hereafter organized until such tribe signifies its assent to the President to be embraced within a particular Territory.

Authority to regulate Indians.

SEC. 1840. Nor shall anything in this Title be construed to affect the authority of the United States to make any regulation respecting the Indians of any Territory, their lands, property, or rights, by treaty, law or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such Territory.

Jurisdiction over Indians committing certain crimes.

SEC. 9. That immediately upon and after the date of the passage of this act, all Indians, committing against the person or property of another Indian, or other person, any of the following crimes, namely: murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases; and all such Indians committing any of the above crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States. (Act March 3, 1885.)

Executive power.

SEC. 1841. The executive power of each Territory shall be vested in a Governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed, and shall be Commander-in-Chief of the Militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the Territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed.

Veto power.

SEC. 1842. Every bill which has passed the Legislative Assembly of any Territory shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that House in which it originated, and that House shall enter the objections at large on its Journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and, if approved, by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the Journal of such House. If any bill is not returned by the Governor within three days, Sundays excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislative Assembly, by adjournment *sine die*, prevent its return, in which case it shall not be a law.

Secretary

SEC. 1843. There shall be appointed a Secretary for each Territory, who shall reside within the Territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. In case of the death, removal, resignation or absence of the Governor from the Territory, the Secretary shall execute all the powers and perform all the duties of Governor, during such vacancy, or absence, or until another Governor is appointed and qualified.

Secretaries duties.

SEC. 1844. The Secretary shall record and preserve all the laws and proceedings of the Legislative Assembly, and all the acts and proceedings of the Governor in the executive department; he shall transmit one copy of the Laws and Journals of the Legislative Assembly, within thirty days after the end of each session thereof, to the President, and two copies of the laws, within like time, to the President of the Senate, and to the Speaker of the House of Representatives, for the use of Congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the President. He shall prepare the acts passed by the Legislative Assembly for publication, and furnish a copy thereof to the public printer of the Territory, within ten days after the passage of each act.

To furnish estimates.

And hereafter it shall be the duty of the Secretary of each Territory to furnish estimates in detail for the lawful expenses thereof, to be presented to the Secretary of the Treasury on or before the first day of October of every year. [Act June 20, 1874.]

Salaries of governor and secretary.

SEC. 1845. From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the Governors of the several Territories shall be three thousand five hundred dollars, and the salaries of the Secretaries shall be two thousand five hundred dollars each.

Legislative power.

SEC. 1846. The Legislative power in each Territory shall be vested in the Governor and a Legislative Assembly. The Legislative Assembly shall consist of a Council and House of Representatives. The members of both branches of the Legislative Assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective Legislative Assemblies shall be biennial. Each Legislative Assembly shall fix by law the day of the commencement of its regular sessions. The members of the Council and of the House of Representatives shall reside in the district or county for which they are respectively elected.

Census and election.

SEC. 1847. Previous to the first election for members of the Legislative Assembly of a Territory in which Congress may hereafter provide a temporary government, the Governor shall cause a census of the inhabitants and qualified voters of the several counties and districts of the Territory to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable conpensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintended such election and the returns thereof, as the Governor may direct; and he shall, at the same time, declare the number of members of the Council and the House of Representatives to which each of the counties or districts is entitled under the act providing such temporary government for the particular Territory. The persons having the highest number of legal votes in each of the districts for members of the Council, shall be declared by the Governor to be duly elected to the Council, and the persons having the highest number of legal votes for the House of Representatives shall be declared by the Governor to be duly elected members of that House; but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor appoints.

Time and place of holding elections.

SEC. 1848. After such first election, however, the time, place and manner of holding elections by the people in any newly created Territory, as well as of holding all such elections in Territories now organized, shall be prescribed by the laws of each Territory.

Appointment.

SEC. 1849. The apportionment of representation, which the Governor is authorized to make by Section eighteen hundred and forty-seven, in the case of a Territory hereafter erected by Congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the Council and House of Representatives, giving to each section of the Territory representation in the ratio of its population, except Indians not taxed; and thereafter in such new Territory, as well as in all Territories now organized, the Legislative Assemblies, respectively, may re-adjust and apportion the representation of the two Houses thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper; but the number of either House, as authorized by law, shall not be increased.

Laws to be submitted to congress.

SEC. 1850. All Laws passed by the Legislative Assembly and Governor of any Territory except in the Territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to Congress, and, if disapproved, shall be null and of no effect.

Extent of legislative power.

SEC. 1851. The Legislative power of every Territory shall extend to all rightful subjects of Legislation, not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

Limit of time of sessions.

SEC. 1852. The sessions of the legislative Assemblies of the several Territories of the United States shall be limited to sixty days' duration. [Act Dec. 23, 1880.]

Number of members.

That from and after the adjournment of the next session of the several Territorial Legislatures the Council of each of the Territories of the United States shall not exceed twelve members, and the House of Representatives of each shall not exceed twenty-four members, and the members of each branch of the said several legislatures shall receive a compensation of four dollars per day each during the sessions provided by law, and shall receive such mileage as the law provides:

Compensation of members.

Mileage.

Compensation of president and speaker.

And the President of the Council and the Speaker of the House of Representatives shall each receive six dollars per day for the same time.

Legislation to district territories.

And the several Legislatures at their next sessions are directed to divide their respective Territories into as many council and representative districts as they desire, which districts shall be as nearly equal as practicable, taking into consideration population, except "Indians not taxed":

Number of districts.

Provided, The number of council districts shall not exceed twelve, and the representative districts shall not exceed twenty-four in any one of said Territories, and all parts of Sections eighteen hundred and forty-seven; eighteen hundred and forty-nine; eighteen hundred and fifty-three, and nineteen hundred and twenty-two of the Revised Statutes of the United States in conflict with the provisions herein are repealed. [Act June 19, 1878.]

Sections 1847, 1849, 1853, 1922.

Members of legislatures prohibited from holding certain offices.

SEC. 1854. No member of the Legislative Assembly of any Territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly in any Territory hereafter organized; and no person holding a commission or appointment under the United States, except Postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the Government of any Territory. The exception of Postmasters shall not apply to the Territory of Washington.

Prohibition of extra compensation.

SEC. 1855. No law of any Territorial Legislature shall be made or enforced, by which the Governor or Secretary of a Territory, or the members or officers of any Territorial Legislature are paid any compensation other than that provided by the laws of the United States.

Fees of secretaries.

Provided, That for the performance of all official duties imposed by the Territorial Legislatures, and not provided for in the organic act, the Secretaries of the Territories respectively shall be allowed such fees as may be fixed by the Territorial Legislatures. [Act June 19, 1878.]

Election of justices of the peace and militia.

SEC. 1856. Justices of the Peace and all general officers of the Militia, in the several Territories, shall be elected by the people, in such manner as the respective Legislatures may provide by law.

Vacancies in the office of justice of the peace, how filled.

Be it enacted, etc. (SEC. 1.) That when from any cause there shall be a vacancy in the office of justice of the peace in any of the Territories of the United States, it shall be lawful to fill such vacancy by appointment or election, in such manner as has been or may be provided by the Governor and Legislative Assembly of such Territory:

Provided, That such appointee, or person elected to fill such vacancy, shall hold office only until his successor shall be regularly elected and qualified as provided by law. [Act April 16, 1880.]

Other officers.

SEC. 1857. All township, district, and county officers, except Justices of the Peace and general officers of the Militia, shall be appointed or elected in such manner as may be provided by the Governor and Legislative Assembly of each Territory; and all other officers not herein otherwise provided for, the Governor shall nominate, and by and with the advice and consent of the Legislative Council of each Territory, shall appoint; but, in the first instance, where a new Territory is hereafter created by Congress, the Governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the Legislative Assembly.

Vacancies, how filled.

SEC. 1858. In any of the Territories, whenever a vacancy happens from resignation or death, during the recess of the Legislative Council, in any office which, under the Organic Act of any Territory, is to be filled by appointment of the Governor, by and with the advice and consent of the Council, the Governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislative Council.

Qualifiations of voting and holding offices at first election.

SEC. 1859. Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of such Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

Future elections.

SEC. 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the Legislative Assembly of each Territory; subject, nevertheless, to the following restrictions on the power of the Legislative Assembly, namely:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States, above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such, and have taken an oath to support the Constitution and Government of the United States.

Second. There shall be no denial of the elective franchise, or of holding office to a citizen on account of race, color, or previous condition of servitude.

Third. No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be ~~allowed~~ to vote in any Territory, by reason of being on service therein, unless such Territory is and has been for the period of six months, his permanent domicile.

Fourth. No person belonging to the Army or Navy shall be elected to or hold any civil office or appointment in any Territory, except officers of the Army on the retired list. [Act March 3, 1883.]

Subordidate officers of legislature.

Their compensation from the United States.

SEC. 1861. That the subordinate officers of each branch of said Territorial legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day; one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and doorkeeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain, at one dollar and fifty cents per day.

Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any Territory. [Act June 19, 1878.]

Delegates to congress.

SEC. 1862. Every Territory shall have the right to send a delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the Legislative Assembly thereof. The person having the greatest number of votes shall be declared by the Governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

Time, place and manner of electing delegate.

SEC. 1863. The first election of a Delegate in any Territory for which a temporary government is hereafter provided by Congress, shall be held at the time and places, and in the manner the Governor of such Territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein for a Delegate, as well as at all elections for a Delegate in organized Territories, such time, places, and manner of holding the election shall be prescribed by the law of each Territory.

Supreme court of territories.

SEC. 1864. The Supreme Court of every Territory shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of Government of the Territory for which they are respectively appointed.

Judicial districts and courts.

SEC. 1865. Every Territory shall be divided into three Judicial Districts; and a District Court shall be held in each district of the Territory by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law; and each Judge, after assignment, shall reside in the district to which he is assigned.

Jurisdiction of courts.

SEC. 1866. The jurisdiction, both appellate and original, of the courts provided for in section 1907 and 1908, shall be limited by law.

Jurisdiction of justices of the peace.

SEC. 1867. No justices of the peace in any Territory shall have jurisdiction of any case in which the title to land, or the boundary thereof, in anywise comes in question.

Chancery and common law jurisdiction.

SEC. 1868. The Supreme Court and the District Courts, respectively, of every Territory, shall possess chancery as well as common law jurisdiction.

Preamble.

WHEREAS, by the organic acts establishing several of the Territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said Territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceeding in all cases legal and equitable, are repugnant to the said organic acts respectively: Therefore,

Common law and chancery jurisdiction of territorial courts.

Certain codes, rules of practice, and proceedings confirmed.

Trial by jury.

Be it enacted, etc., That it shall not be necessary in any of the courts of the several Territories of the United States, to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said Territories respectively, in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all cases whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby, validated and confirmed: *Provided*, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law. [Act April 7, 1874.]

Appellate jurisdiction of supreme court.

SEC. 1869. Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the District Courts to the Supreme Court, of all the Territories, respectively, under such regulation as may be prescribed by law, but in no case, removed to the Supreme Court, shall trial by jury be allowed in that court.

Clerk of supreme court.

SEC. 1870. The Supreme Court of each Territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

Clerk of district court.

SEC. 1871. Each Judge of the Supreme Court of the respective Territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

Register in chancery; residence and office.

SEC. 1872. Every district clerk shall be also the register in chancery, and shall reside and keep his office at the place where the court is held.

Judicial districts how defined.

SEC. 1873. Temporarily, and until otherwise provided by law, the Governor of every Territory, which may be hereafter established, shall define, by proclamation, the judicial districts of such Territory, and assign the Judges appointed for such Territory, to the several districts, as well as fix the times and places for holding courts in the respective counties or subdivisions of each judicial district.

Judges of supreme courts to hear certain causes.

SEC. 1874. The Judges of the Supreme Court of each Territory, are authorized to hold court within their respective districts, in the counties wherein, by the laws of the Territory, courts have been or may be established; for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the Territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

District attorneys.

SEC. 1875. There shall be appointed in each Territory a person learned in the law, to act as Attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Marshals.

SEC. 1876. There shall be appointed a Marshal for each Territory. He shall execute all process issuing from the Territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law, on the marshals for the several judicial districts of the United States. He shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President.

Appointment of governor and other officers.

SEC. 1877. The Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal of every Territory shall be nominated, and by, and with the advice and consent of the Senate, appointed by the President.

Oath of office, how administered.

SEC. 1878. The Governor and Secretary for each Territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the Territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificates shall be received and recorded by the Secretary among the executive proceedings; and the Chief Justice and the Associate Justices, and all other civil officers appointed for any Territory, before they act as such, shall take a like oath before the Governor or Secretary, or some Judge or Justice of the Peace of the Territory who may be duly commissioned and qualified, and such oath shall be certified and transmitted by the person taking the same to the Secretary, to be, by him, recorded as above directed; but after the first qualification of the officers herein specified in the case of a new Territory, as well as in all organized Territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each Territory.

Salaries of territorial officers, when to commence.

Hereafter payment of salaries of all officers of the Territories of the United States appointed by the President, shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such Territory; and said oath shall hereafter be adminis-

Oath; when administered.

tered in the Territory in which such office is held. [Act May 1, 1876.]

SEC. 1879. The annual salary of the Chief Justice and Associate Justices of all the Territories now organized, shall be three thousand dollars each.

Salaries of justices.

SEC. 1880. The salary of the Attorney of the United States for each Territory, shall be at the rate of two hundred and fifty dollars annually.

Salary of attorneys.

SEC. 1881. The salary of the Marshal of the United States for each Territory, shall be at the rate of two hundred dollars a year.

Salary of marshal.

SEC. 1882. The salaries provided for in this Title, to be paid to the Governor, Secretary, Chief Justices and Associate Justices, District Attorney and Marshal of the several Territories, shall be paid quarter-yearly at the Treasury of United States.

Salaries, when paid.

That hereafter the salaries appropriated for the United States Judges in the foregoing paragraphs, and Judges of the Court of Claims, and of the Territories, may be paid monthly. [Act March 3, 1881.]

SEC. 1883. The fees and costs to be allowed to the United States Attorneys and Marshals, to the Clerks of the Supreme and District Courts, and to jurors, witnesses, commissioners, and printers, in the Territories of the United States, shall be the same for similar services by such persons as prescribed in chapter sixteen, Title "The Judiciary," and no other compensation shall be taxed or allowed.

Fees of clerks.

SEC. 1884. When any officer of a Territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the President, who shall officially certify his opinion of such cause to the proper accounting officer of the Treasury, to be filed in his office.

Salary not to be paid when officer is absent.

SEC. 1885. The Legislative Assembly of every Territory hereafter organized shall hold its first session at such time and place in the Territory as the Governor thereof shall appoint and direct; and at the first session of the Legislative Assembly, or as soon thereafter as it may be deemed expedient, the Governor and Legislative Assembly shall proceed to locate and establish the seat of government for the Territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the Governor and Legislative Assembly.

Seat of government in a new territory.

SEC. 1886. All accounts for disbursements, in the Territories of the United States, of money appropriated by Congress for the support of government therein, shall be settled and adjusted at the Treasury Department; and no act, resolution, or order of the Legislature of any Territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the Treasury. No payment shall be made or allowed, unless the Secretary of the Treasury has estimated therefor and the object been approved by Congress. No session of the Legislature of a Territory shall be held until the appropriation for its expenses has been made.

Accounts of territories, no payment unless approved by congress.

SEC. 1887. Hereafter no expense for printing, exceeding

Limitation on expense of printing.

four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the Legislature of any of the Territories.

And in no case shall the expenditure for public printing in any of the Territories exceed the sum of two thousand five hundred dollars for any one year. [Act June 19, 1878.]

Limitation on expenses of legislatures.

SEC. 1888. No Legislative Assembly of a Territory shall, in any instance or under any pretext, exceed the amount appropriated by Congress for its annual expenses.

Territorial legislatures. Forbidden to pass certain local or special laws.

Be it enacted, etc., That the legislatures of the Territories of the United States now, or hereafter to be organized, shall not pass *local or special laws* in any of the following enumerated cases, that is to say:

Granting divorces.

Changing the *names* of persons or places.

Laying out, opening, altering, and working roads or highways.

Vacating roads, town-plats, streets, alleys, and public grounds.

Locating or changing *county seats.*

Regulating *county* and *township affairs.*

Regulating the *practice in courts* of justice.

Regulating the jurisdiction and duties of *justices of the peace,* police magistrates, and *constables.*

Providing for changes of *venue* in civil and criminal cases.

Incorporating cities, towns, or villages, or changing or *amending the charter* of any town, city, or village.

For the *punishment* of crimes or misdemeanors.

For the *assessment and collection of taxes* for Territorial, county, township, or road purposes.

Summoning and impaneling grand or petit *jurors.*

Providing for the management of common *schools.*

Regulating the rate of *interest* on money.

The opening and conducting of any *election* or designating the place of voting.

The sale or mortgage of *real estate* belonging to *minors* or others under disability.

The protection of *game or fish.*

Chartering or licensing *ferries or toll bridges.*

Remitting fines, penalties, or forfeitures.

Creating, increasing or decreasing *fees,* percentage, or allowances of public officers during the term for which said officers are elected or appointed.

Changing the law of *descent.*

Granting to any corporation, association, or individual the right to lay down *railroad tracks,* or amending existing charters for such purpose.

Granting to any corporation, association, or individual any *special* or *exclusive privilege,* immunity, *or franchise* whatever.

No special law to be enacted where general law can apply.

In all *other cases where a general law can be made applicable,* no special law shall be enacted in any of the Territories of the United States by the Territorial legislatures thereof.

Not to subscribe etc., to any corporation.

SEC. 2. That no Territory of the United States now or hereafter to be organized, or any political or municipal corporation or subdivision of any such Territory, shall hereafter make any subscription to the capital stock of any incorporated company, or company or association having corporate powers, or in any manner loan its credit to, or use it for the benefit of any such company or association, or borrow any money for the use of any such company or association.

In what cases debts may be incurred by territories.

Limit.

Not to prohibit refunding.

SEC. 3. That no law of any Territorial legislature shall authorize any *debt to be contracted* by or on behalf of such Territory except in the following cases: To meet a *casual deficit* in the revenues, to pay the *interest* upon the Territorial debt, to suppress *insurrections*, or to provide for the public *defense*, except that in addition to any indebtedness created for such purposes, the legislature may authorize a *loan* for the erection of *penal, charitable or educational* institutions for such Territory, if the total indebtedness of the Territory is not thereby made to exceed *one* per centum upon the assessed value of the taxable property in such Territory as shown by the last general assessment for taxation. And nothing in this act shall be construed to prohibit the *refunding* of any existing indebtedness of such Territory or of any political or municipal corporation, county or other subdivision therein.

Limit of indebtedness to be incurred by counties, etc.

Not to be retroactive.

SEC. 4. That no political or municipal corporation, county or other subdivision, in any of the Territories of the United States, shall ever become *indebted in any manner* or *for any purpose* to any amount in the aggregate, *including existing indebtedness*, exceeding *four* per centum on the value of the taxable property within such corporation, county, or subdivision, to be ascertained by the last assessment for Territorial and county taxes previous to the incurring of such indebtedness; and all *bonds or obligations* in excess of such amount given by such corporation shall be *void*: That nothing in this act contained shall be so construed as to affect the validity of any act of any Territorial legislature heretofore enacted, or of any obligations existing or contracted thereunder, nor to preclude the issuing of bonds already contracted for in pursuance of express provisions of law; nor to prevent any Territorial legislature from legalizing the acts of any county, municipal corporation, or subdivision of any territory as to any bonds heretofore issued or contracted to be issued.

General incorporation acts.

Insurance, banking, etc., associations included.

SEC. 1889. The Legislative Assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate, for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue) loan, trust, and guarantee associations, and for the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association.

Powers of congress to annul, etc., laws not abridged.

SEC. 6. That nothing in this act contained shall be construed to abridge the power of Congress to annul any law passed by a Territorial legislature, or to modify any existing law of Congress requiring in any case that the laws of any Territory shall be submitted to Congress.

Acts in conflict to be null and void.

SEC. 7. That all acts and parts of acts hereafter passed by any Territorial legislature in conflict with the provisions of this act shall be null and void. [Act July 30, 1886.]

Limit on right of religious corporations to hold real estate.

SEC. 1890. No corporation or association, for religious or charitable purposes, shall acquire or hold real estate in any Territory, during the existence of the Territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Constitution and laws of the United States made applicable to all territories.

SEC. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States.

Penitentiaries to continue under control of United States marshal.

SEC. 2. That the penitentiaries in the Territories of Montana, Idaho, and Wyoming, shall continue under the care and control of the Marshal of the United States for said Territories, under and pursuant to the provisions of the act entitled, "An act in relation to certain Territorial penitentiaries," approved January tenth, eighteen hundred and seventy-one; which said last mentioned act is hereby revived and re-enacted so far as the same applies to the Territories of Montana, Idaho, and Wyoming. [Act June 20, 1874.]

Rules for government of penitentiaries.

SEC. 1893. The Attorney-General of the United States shall prescribe all needful rules and regulations for the Government of such penitentiary, and the Marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the Marshal and his deputies, for their services under such regulations, shall be fixed by the Attorney-General.

Payment of marshal etc., and of expense of subsistence etc., of offenders.

SEC. 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be, sentenced to imprisonment in such penitentiary, shall be chargeable on, and payable out of the fund for defraying the expenses of suits in which the United States are concerned, and of the prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

Imprisonment in penitentiaries

SEC. 1895. Any person convicted by a court of competent jurisdiction in a Territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such Territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisoment, in the same manner as if he had been convicted of an offense against the laws of the United States.

Care and custody of convicts of any territory contracted for in any other territory or state.

Be it enacted, etc., That the legislative assemblies of the several Territories of the United States may make such provision for the care and custody of such persons as may be convicted of crime under the laws of such Territory as they shall deem proper, and for that purpose may authorize and contract for the care and custody of such convicts in any other Territory or State, and provide that such person or persons may be sentenced to confinement accordingly in such other Territory or State, and all existing legislative enactments of any of the Territories for that purpose are hereby legalized: *Provided*, That the expense of keeping such prisoners shall be borne by the respective Territories, and no part thereof shall be borne by the United States. [Act June 16, 1880.]

Proviso.

Alcoholic drinks and narcotics. Study of effects of, to be compulsory in public schools, in Territories and District of Columbia, in Military and Naval Academies, and colored and Indian Schools in Territories.

Be it enacted, etc., That the nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the branches of study taught in the common or public schools, and in the Military and Naval Schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of text books in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the Territories, in the Military and Naval Academies of the United States, and in the District of Columbia, and in all Indian and colored schools in the Territories of the United States.

Enforcement.

SEC. 2. That it shall be the duty of the proper officers in control of any school described in the foregoing section to enforce the provisions of this act; and any such officer, school director, committee, superintendent, or teacher who shall refuse or neglect to comply with the requirements of this act, or shall neglect or fail to make proper provisions for the instruction required, and in the manner specified by the first section of this act, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases.

Punishment for failure to comply.

Teacher's certificates.

SEC. 3. That no certificate shall be granted to any person to teach in the public schools of the District of Columbia or Territories, after the first day of January, anno Domini eighteen hundred and eighty-eight, who has not passed a satisfactory examination in physiology and hygiene, with special reference to the nature and the effects of alcoholic drinks and other narcotics upon the human system. [Act May 20, 1886.]

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Boundaries of Idaho.

SEC. 1902. All that part of the Territory of the United States, included within the following limits, to wit: Beginning at a point in the middle channel of the Snake river, where the northern boundary of Oregon intersects the same; then follow down the channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river; thence due North to the forty-ninth parallel of latitude; thence East, along that parallel, to the thirty-ninth degree of longitude West of Washington; thence South along that degree of longitude to the crest of the Bitter Root Mountains; thence Southward along the crest of the Bitter Root Mountains till its intersection with the Rocky Mountains; thence Southward along the crest of the Rocky Mountains to the thirty-fourth degree of longitude West of Washington; thence South along that degree of longitude to the forty-second degree of North latitude; thence West, along that parallel, to the Eastern boundary of the State of Oregon; thence North, along that boundary, to the place of beginning, is created into a temporary government by the name of the Territory of Idaho.

Elections in Washington and Idaho.

SEC. 1905. The elections in the Territories of Washington and Idaho for Delegates to the House of Representatives, shall be held bi-ennially, on the Tuesday next following the first Monday in November; and all elective Territorial, County, and Precinct officers shall hereafter be elected at the times herein specified, unless otherwise provided by legislation subsequent hereto, in either of such Territories.

Delegate to Congress.

SEC. 1906. The Delegate to the House of Representatives from each of the Territories of Washington, Idaho and Montana, must be a citizen of the United States.

Judicial power how vested.

SEC. 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana, and Wyoming, shall be vested in a Supreme Court, District Courts, Probate Courts, and in Justices of the Peace.

Probate courts in Idaho to have jurisdiction in certain civil and criminal cases; but not in land, chancery, or divorce cases.

Be it enacted, etc., That the probate courts of the Territory of Idaho, in their respective counties, in addition to their probate jurisdiction, be, and they are hereby, authorized to hear and determine all civil causes wherin the damage or debt claimed does not exceed the sum of five hundred dollars, exclusive of interest, and such criminal cases arising under the laws of the Territory as do not require the intervention of a grand jury: *Provided*, That they shall not have jurisdiction in any matter in controversy, when the title, boundary, or right to the peaceable possession of land may be in dispute, or in chancery or divorce cases: *And, provided further*, That in all cases an appeal may be taken from any order, judgment, or decree of said probate courts to the district court. [Act December 13, 1870.]

Appeals.

Writs of error to U. S. court.

SEC. 1909. Writs of error and appeals from the final decisions of the Supreme Court of either of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, shall be allowed to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the Supreme Courts created by this Title or of any Judge thereof, or of the District Courts created by this Title, or of any Judge thereof, upon writs of *habeas corpus* involving the question of personal freedom.

Appeals or writs of error from judgments, etc., of supreme court, District of Columbia; or of Territory, not allowed unless amount involved be more than $5,000.

Be it enacted, etc., That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.

Not to apply to cases involving validity of patent or copyright, treaty statute, or authority exercised under United States.

SEC. 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copy-right, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute. [Act March 3, 1885.]

Appellate jurisdiction of Supreme Court of United States, how exercised.

SEC. 2. That the appellate jurisdiction of the Supreme Court of the United States over the judgment and decrees of said Territorial courts, in cases of trial by jury, shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed, or may hereafter prescribe: *Provided*, That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court together with the transcript of the proceedings and judgment or decree; but no appellate proceedings in said Supreme Court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: *And provided further*, That the appellate court may make any order in any case

Proceedings on appeal.

Proviso.

heretofore appealed, which may be necessary to save the rights of the parties; and that this act shall not apply to cases now pending in the Supreme Court of the United States where the record has already been filed. [Act April 7, 1874.]

Jurisdiction of district courts under constitution, &c.

SEC. 1910. Each of the District Courts in the Territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States; and the first six days of every term of the respective District Courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such Constitution and laws; but writs of error and appeals in all such cases may be had to the Supreme Court of each Territory, as in other cases.

Judges of Supreme Court in Idaho and Montana to define Judicial districts, &c.

SEC. 1914. The Judges of the Supreme Courts of the Territories of Idaho and Montana, or a majority of them, shall, when assembled at their respective seats of Government, define the judicial districts of each of such Territories, and assign the Judges who may be appointed for each of such Territories to the several districts; and shall also fix the times and places for holding courts in the several *counties or subdivisions* in each of such judicial districts, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less than two terms a year shall be held at each place of holding court in the Territory of Montana.

Extra sessions Legislative Assembly in Washington, Idaho, Montana.

SEC. 1923. In each of the Territories of Washington, Idaho, and Montana, the Governor shall have power to call the Legislative Assembly together by proclamation, on an extraordinary occasion, at any time.

Hereafter no extraordinary session of the Legislature of any Territory, wherever the same is now authorized by law, shall be called, until the reasons for the same have been presented to the President of the United States, and his approval thereof has been duly given. [Act June 22, 1874.]

Jurisdiction of Justices of Peace.

SEC. 1927. Justices of the Peace in the Territories of Colorado, Washington, Idaho, Montana and Arizona, shall not have jurisdiction of any matter in controversy where the debt or sum claimed, exceeds three hundred dollars. [Act January 19, 1883.]

Contingent expenses of certain Territories.

SEC. 1935. There shall be appropriated annually, one thousand dollars, to be expended by the respective Governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, including the salary of the clerk in the Executive Departments of those Territories.

In Washington, Idaho and Montana.

SEC. 1940. There shall be appropriated, respectively, for the Territories of Washington, Idaho and Montana, annually, a sufficient sum, to be expended by the Secretary of each Territory herein named upon an estimate to be made by the Secretary of the Treasury, to defray the expenses of the Legislative Assembly, and other incidental expenses. The Governor and Secretary of each Territory above specified shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the Secretary of the Treasury, and shall semi-annually, account to such Secretary for the manner in which such sums of money have been expended.

No payment of salary in certain Territories until officers enter on their duties.

SEC. 1941. No payment of salary shall be made to the Governor, Secretary, Chief Justice, and Associate Justices of Washington, Idaho, and Montana Territories until such officers have entered upon the duties of their respective appointments.

Mileage of members Legislature.

SEC. 1943. The members of the Legislative Assembly of Idaho and Montana Territories shall each receive four dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route.

Seat of government

SEC. 1945. The Seat of government, when once fixed by the Governor and Legislative Assembly of Idaho and Montana, respectively, shall not be at any time changed, except by an act of such Assembly, for each Territory, respectively, duly passed and approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

School lands in certain Territories.

SEC. 1946. Sections numbered sixteen and thirty-six, in each township of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming shall be reserved for the purpose of being applied to schools in the several Territories herein named, and in the States and Territories hereafter to be erected out of the same.

Agencies, &c., continued.

SEC. 1949. The existing agencies and superintendencies of the Indians inhabiting the Territories of Idaho and Montana shall be continued with the same powers and duties now prescribed by law, except that the President may, at his discretion, change the location of the office of such agents or superintendents.

Disbursing officers in Washington, Idaho and Montana, to give security.

SEC. 1951. All officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territories of Washington, Idaho, and Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give security at such time and in such manner as the Secretary of the Treasury may prescribe.

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OF THE TERRITORIAL PRISON.

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TITLE II.

OF COUNTY JAILS.

8525–8547

AN ACT

TO REVISE AND CONSOLIDATE THE GENERAL STATUTES OF THE TERRITORY OF IDAHO.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

REVISED STATUTES

OF THE

TERRITORY OF IDAHO.

GENERAL PROVISIONS.

APPLICABLE TO ALL THE CODES.

SECTION
1. Title and divisions of the Revised Statutes.
2. When Revised Statutes take effect.
3. Not retroactive.
4. Construction of the Revised Statutes.
5. Provisions similar to existing laws, how construed.
6. Tenure of offices preserved.
7. Construction of repeal as to certain officers.
8. Actions, etc., not affected by Revised Statutes.
9. Limitations shall continue to run.
10. Holidays.

SECTION
11. Computation of time.
12. Certain acts not to be done on holidays.
13. Seal defined.
14. Joint authority.
15. Words and phrases.
16. Certain terms used in the Revised Statutes defined.
17. Statutes, laws, or rules inconsistent with, repealed.
18. Common law, when in force.
19. Prior acts repealed. Effect of Revised Statutes.
20. Effect of Code upon past offenses.

SECTION 1. These statutes consisting of
Part First, Political;
Part Second, Civil;
Part Third, Remedial;
Part Fourth, Penal,
constitute the Revised Statutes of the Territory of Idaho.

Titles and division of the Revised Statutes.

SEC. 2. These Revised Statutes take effect at twelve o'clock, noon, of the first day of June, eighteen hundred and eighty-seven.

When Statutes take effect.

SEC. 3. No part of these Revised Statutes is retroactive, unless expressly so declared.

Not retroactive. C. C. P. Sec. 2.

SEC. 4. The rule of the common law that statutes in derogation thereof are to be strictly construed, has no application to these Revised Statutes. The Revised Statutes establish the law of this Territory respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed, with a view to effect their objects and to promote justice.

Construction of the Revised Statutes. C. C. P. Sec. 3.

SEC. 5. The provisions of these Revised Statutes, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

Provisions similar to existing laws, how construed. C. C. P. Sec. 4.

SEC. 6. All persons who at the time these Revised Statutes take effect hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by these Revised Statutes.

Tenure of offices preserved.

SEC. 7. When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued, in the Revised Statutes, such office ceases at the time the Revised Statutes take effect.

Construction of repeal as to certain officers.

SEC. 8. No action or proceeding commenced before the Revised Statutes take effect, and no right accrued, is affected by their provisions, but the proceedings therein must

Actions, etc., not affected by the Revised Statutes. C. C. P. Sec. 5.

conform to the requirements of the Revised Statutes as far as applicable.

Limitations shall continue to run. C. C. P. Sec. 6.

SEC. 9. When a limitation or period of time prescribed in any existing statute for acquiring a right, or barring a remedy, or for any other purpose, has begun to run before these Revised Statutes go into effect, and the same or any limitation is prescribed in these Statutes, the time which has already run shall be deemed part of the time herein prescribed as such limitation.

Holidays. C. C P. Sec. 7.

SEC. 10. Holidays within the meaning of these Revised Statutes are: Every Sunday, the first day of January, the twenty-second day of February, the fourth of July, the twenty-fifth day of December, every day on which an election is held throughout the Territory, and every day appointed by the President of the United States, or by the Governor of this Territory, for a public fast, thanksgiving, or holiday.

Computation of time. C. C. P. Sec. 8.

SEC. 11. The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

Certain acts not to be done on holidays. C. C. P. Sec. 9.

SEC. 12. Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

Seal defined. C. C. P. Sec. 10.

SEC. 13. When the seal of a court, public officer or person is required by law to be affixed to any paper, the word "seal," includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.

Joint authority. C C. P. Sec. 11.

SEC. 14. Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

Words and phrases defined. C. C. P. Sec. 12.

SEC. 15. Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed accordding to such peculiar and appropriate meaning or definition.

Terms defined. C. C. P. Sec. 13

SEC. 16. Words used in these Revised Statutes in the present tense, include the future as well as the present; words used in the masculine gender, include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing, includes printing; oath includes affirmation or declaration, and every mode of oral statement, under oath or affirmation, is embraced by the term "testify;" and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

The following words also have, in the Revised Statutes, the signification attached to them in this section, unless otherwise apparent from the context:

Property defined.

1. The word "property," includes both real and personal property.

2. The words "real property," are co-extensive with lands, tenements and hereditaments, possessory rights and claims. Real property.

3. The words "personal property," include money, goods, chattels, things in action, and evidences of debt. Personal property.

4. The word "month," means a calender month, unless otherwise expressed. Month.

5. The word "will," includes codicils. Will.

6. The word "writ," signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process," a writ or summons issued in the course of judicial proceedings. Writ.

7. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States," may include the District and Territories. State.

Laws or rules inconsistent with these statutes repealed. C. C. P. Sec. 14.

SEC. 17. No statute law is continued in force because it is consistent with the provisions of the Revised Statutes on the same subject, but in all cases provided for therein, all statute laws heretofore in force in this Territory, whether consistent or not with the provisions of the Revised Statutes, unless expressly continued in force, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in these Statutes provided; nor does it affect any local or special statute not expressly repealed.

Common law, when rule of decision. Comp. laws, 676.

SEC. 18. The common law of England, so far as it is not repugnant to, or inconsistent with the Constitution or laws of the United States, in all cases not provided for in these Revised Statutes, is the rule of decision in all the Courts of this Territory.

Prior acts repealed, effect of Revised Statutes.

SEC. 19. All general acts and parts and clauses of acts of a general nature, passed prior to the fourteenth session of the Legislative Assembly, are hereby repealed, and these Revised Statutes are in force in lieu thereof; but such repeal does not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal takes effect, but all rights and liabilities under said repealed acts continue, in the same manner, as if said repeal had not been made.

Effect of Revised Statutes on past offenses

SEC. 20. All offenses committed, and all penalties or forfeitures incurred prior to said repeal, may be prosecuted and punished in the same manner and with the same effect, as if said repeal had not been made.

POLITICAL CODE

OF

IDAHO TERRITORY.

5

PART FIRST.—POLITICAL.

PRELIMINARY PROVISIONS.

SECTION
100. Title of Part First of the Revised Statutes and how cited.

SECTION 100. Part First of these Revised Statutes shall be known as the Political Code of the Territory of Idaho, and whenever cited, enumerated, referred to, or amended, may be designated simply as the Political Code, adding, when necessary, the number of the section.

Title of part first of Revised Statutes, how cited.

TITLE I.

SEAT OF GOVERNMENT AND PUBLIC OFFICERS.

CHAPTER I.

SEAT OF GOVERNMENT.

SECTION
105. Seat of Government, where located.

SECTION 105. The seat of government of this Territory is at Boise City, in the County of Ada.

Location of seat of Government, Comp. laws, 857.

CHAPTER II.

CLASSIFICATION OF PUBLIC OFFICERS.

SECTION
110. Classification of public officers.

SECTION 110. The public officers of this Territory are classified as follows:

Officers, classification of.

1. Legislative;
2. Executive;
3. Judicial;
4. Ministerial officers and officers of the Courts; But this classification is not to be construed as defining the legal powers of either class.

CHAPTER III.

LEGISLATIVE OFFICERS.

SECTION
115. Number and designation.
116. Term of office.
117. Election of members of the Legislature.
118. Apportionment of members of the Council.
119. Apportionment of members of the House of Representatives.
120. ~~Time~~ and place of meeting
121. Certificate of election, evidence of right to seat.
122. Organization of Legislature.
123. What officers of, may administer oaths.
124. Duties of officers at close of session.
125. Who may contest.
126. Contested election to legislature. Notice of contest.
127. Answer of notice.
128. Testimony.
129. Depositions.
130. Testimony taken at two or more places.
131. Subpœnas.
132. Same.
133. Depositions taken by consent.
134. Refusal to testify.
135. Examination.
136. Examination, how conducted.

SECTION
137. Production of papers.
138. Per diem and mileage of witnesses.
139. Fees of officers.
140. Adjournment.
141. Return of testimony.
142. Depositions.
143. Further evidence may be taken.
144. Expenses of contested cases.
145. Subpœnas by President or Speaker.
146. Service of subpœnas.
147. Contempt.
148. Compelling attendance.
149. Witnesses not to be held to answer criminally. Refusal to testify.
150. Bills received by the Governor must be indorsed.
151. Approval of Bills.
152. Bills returned without approval.
153. Return, when House not in session.
154. Bills remaining with the Governor more than three days.
155. When statutes take effect.
156. When joint resolutions take effect.
157. Effect of amendment.
158. No repealed act revived by repealing the Act repealing it.
159. Repealing a law creating offense does not bar punishment.
160. When Territorial officers are to report.

Number and designation.

SEC. 115. The Legislature consists of:

1. A Council, of twelve members.
2. A House of Representatives, of twenty-four members.

Term of office.

SEC. 116. The term of office of members of the Legislature is two years from the first day of December, next after their election.

Election of members of Legislature.

SEC. 117. The members of the Legislature must be elected at the general election in the year eighteen hundred and eighty-eight, and at the general election every two years thereafter.

Apportionment of members of Council. 13 Ses., 26.

SEC. 118. The members of the Legislative Council are apportioned as follows:

To the county of Ada, one member; to the counties of Ada and Boise, one member; to the county of Alturas, two members; to the counties of Bear Lake, Oneida and Cassia, one member; to the county of Bingham, one member; to the counties of Bingham and Oneida, one member; to the county of Idaho, one member; to the counties of Lemhi and Custer, one member; to the county of Nez Perce, one member; to the counties of Owyhee and Washington, one member; to the counties of Shoshone and Kootenai, one member.

Apportionment of members of House of Representatives. 13 Ses. 26.

SEC. 119. The members of the House of Representatives are apportioned as follows:

To the county of Ada, three members; to the county of Alturas, four members; to the county of Bear Lake, one member; to the county of Bingham, two members; to the counties of Bingham and Custer, one member; to the county of Boise, one member; to the county of Cassia, one member; to the county of Custer, one member; to the county of Idaho, one member; to the county of Lemhi, one member; to the county of Nez Perce, three members; to the county of Oneida, one member; to the county of Owyhee, one member; to the county of Shoshone, one member; to the counties of Shoshone and Kootenai, one member; to the county of Washington, one member.

Time and place of meeting.

SEC. 120. The Legislature must assemble at the seat of Government on the second Monday in December, eighteen hundred and eighty-eight, and on the second Monday in December every two years thereafter.

Certificate of election evidence of right to seat.

SEC. 121. The certificate of election is prima facie evidence of the right to membership.

Organization of Legislature, 10 Ses., 31.

SEC. 122. At the hour of twelve o'clock M., on the day appointed for the meeting of any regular session of the Legislature, the presiding officer, or in his absence the Chief Clerk, of each House of the last session, must call the same to order and preside until a presiding officer is chosen, or in case of the absence of both of said officers the senior member present must perform said duties; all members-elect present having certificates of election from the clerk of the Board of County Commissioners of their respective counties, and no other person has the right to participate in the organization of the respective Houses. Neither House must organize or transact any business, but must adjourn from day to day, until a majority of all the members authorized by law to be elected are present.

What officer may administer oaths.

SEC. 123. The President and President *pro tem*, of the Council, and the Speaker and Speaker *pro tem*, of the House, may administer the oath of office to any member, and to the officers of their respective bodies. The members of any committee may administer oaths to witnesses in any matter under examination.

Duties of Clerks at close of session.

SEC. 124. The clerks, at the close of each session of the Legislature, must mark, label, and arrange all bills and papers belonging to the archives of their respective Houses, and deliver them, together with all the books of both Houses, to the Secretary of the Territory, who must certify to the reception of the same.

Who may contest.

SEC. 125. The right of any person declared elected to a seat in the Legislative Assembly may be contested by any qualified voter of the county or district to be represented by such person.

Contested election to Legislature. 11 Ses., 259.

Notice of contest.

SEC. 126. When any person intends to contest an election of any member of the Legislative Council, or House of Representatives, he must, within ten days after the result of such election is determined by the Board of Canvassers, give notice in writing to the member whose seat he designs to contest, of his intention to contest the same, and in such notice specify the particular grounds upon which he relies in the contest.

Answer of notice. 11 Ses., 259.

SEC. 127. Any member upon whom the notice, mentioned in the foregoing section is served, must within ten days after the service thereof, answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election, and serve a copy of his answer upon the contestant.

Testimony. 11 Ses., 260.

SEC. 128. In such contested election cases the time allowed for taking testimony is twenty-five (25) days, and the testimony must be taken in the following order:

The contestant may take testimony during the first ten days: the return member during the succeeding ten days; and the contestant may take testimony in rebuttal only during the remaining five days of said period.

Depositions. 11 Ses., 260.

SEC. 129. The party desiring to take a deposition under the provisions of this Act, must give the opposite party notice, in writing, of the time and place, when and where the same will be taken, of the names of the witnesses to be examined and their places of residence, and of the name of an officer before whom the same will be taken. The notice must be personally served upon the opposite party, or upon any agent or attorney authorized by him to attend the taking of testimony or cross examining of witnesses in the matter of such contest, if by the use of reasonable diligence such service can be made; but if personal service cannot be made, the service may be made by leaving a duplicate of the notice at the usual place of abode of the opposite party. The notice must be served so as to allow the opposite party sufficient time, by the usual route of travel, to attend, and one day for preparation, exclusive of Sundays, and the day of service. Testimony in rebuttal may be taken on three days' notice.

Testimony taken at two or more places. 11 Ses., 260.

SEC. 130. Testimony in contested election cases may be taken at two or more places at the same time.

Subpœnas. 11 Ses., 260.

SEC. 131. When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpœna, to any District Judge of the Territory, the Probate Judge, or any Justice of the Peace, Notary Public, Mayor, Recorder, or other civil officer authorized to administer oaths within the county where the witness resides or may be found.

Same. 11 Ses., 260.

SEC. 132. The officer to whom the application authorized by the preceding section is made, must thereupon issue his writ of subpœna, directed to all such witnesses as are named to him, requiring their attendance before the officer named in the notice, at some time and place named in the subpœna, in order to be examined respecting the contested election.

Depositions taken by consent. 11 Ses., 260.

SEC. 133. It is competent for the parties, their agents or attorneys, authorized to act in the premises, by consent in writing, to take depositions without notice; also, by such written consent, to take depositions (whether upon or without notice) before any officer or officers authorized to take depositions in civil actions. Any written consent, given as aforesaid, must be returned with the depositions.

Refusal to testify. 11 Ses., 261.

SEC. 134. Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, forfeits the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpœna was issued, and for his use, and is guilty of a misdemeanor.

Examination. 11 Ses., 261.

SEC. 135. All witnesses who attend in obedience to a subpœna, or who attend voluntarily, at the time and place appointed, of whose examination notice has been given, as provided in this chapter must then and there be examined on oath by the officer before whom the depositions are to be taken.

Examination, how conducted. 11 Ses., 261.

SEC. 136. The officer must cause the testimony of the witnesses to be reduced to writing, together with the questions proposed by the parties, or their agents, in his presence, and in the presence of the parties, or their agents, if attending, and to be duly attested by the witnesses respectively.

Production of papers. 11 Ses., 261.

SEC. 137. The officers have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they be official papers, such person is guitly of a misdemeanor.

Per diem and mileage of witnesses. 11 Ses., 261.

SEC. 138. Every witness attending by virtue of any subpœna herein directed to be issued is entitled to receive the sum of two dollars for each day's attendance, and the further sum of twenty-five cents for every mile necessarily traveled in going and returning; such allowance must be ascertained and certified by the officer taking the examination, and paid by the party at whose instance such witness was summoned.

Fees of officers.

SEC. 139. Officers performing services, in a contested election case, may charge and collect from the party at whose instance such services were performed, the same fees as are allowed for similar services in civil cases.

Adjournment. 11 Ses., 262.

SEC. 140. The taking of the testimony may, if so stated, in the notice, be adjourned from day to day.

Return of testimony. 11 Ses., 262.

SEC. 141. All officers taking testimony to be used in a contested election case, must, when the same is completed, certify and carefully seal and forward the same by mail, addressed to the Clerk of the Supreme Court at Boise City, Idaho; and must also endorse upon the envelope the name of the case in which it is taken, together with the name of the party in whose behalf it is taken, and subscribe such endorsement. The Clerk of the Supreme Court must immediately on the organization of the House at the session, if the House be not then organized, transmit the same unopened to that body to which the contest relates.

Depositions.

SEC. 142. At any time after notice of contest has been given, and before the trial thereof before the proper branch of the Legislature, either party may also take depositions, to be read on the trial, in like manner and under the same rules as are allowed and required in the cases of depositions to be read on the trial of civil actions; and such depositions, when taken, must be sealed up by the officer taking the same, and directed to the Clerk of the Supreme Court, who must keep the same unopened, and deliver them to the presiding officer of the House in which the contest is to be tried.

Further evidence may be taken.

SEC. 143. The House before which the contest is pending may take such other evidence in the case as it deems material.

Expenses of contested cases. 11 Ses., 262.

SEC. 144. No payment must be made by the Legislative Assembly, or by either House thereof, to either party to a contested case, for expenses incurred in prosecuting or defending the same.

Subpœnas by the President or Speaker.

SEC. 145. A subpœna requiring the attendance of any witness before either House of the Legislature or a committee thereof may be issued by the President of the Council, Speaker of the House, or the chairman of any committee before whom the attendance of the witness is desired; and it is sufficient if:

1. It states whether the proceeding is before the Council or House, or a committee;
2. It is addressed to the witness;
3. It requires the attendance of such witnesses at a time and place certain;
4. It is signed by the President of the Council, Speaker of the House, or chairman of a committee.

Service of subpœnas.

SEC. 146. The subpœna may be served by any person who might be a witness in the matter, and his affidavit that he delivered a copy to the witness is evidence of service.

Contempt.

SEC. 147. If any witness neglects or refuses to obey such subpœna, or appearing, refuses to testify, the Council or House may, by resolution entered on the Journal, commit him for contempt.

Compelling attendance.

SEC. 148. Any witness neglecting or refusing to attend in obedience to subpœna may be arrested by the sergeant-at-arms and brought before the Council or House. The only warrant of authority necessary to authorize such arrest is a copy of a resolution of the Council or House, signed by the presiding officer, and countersigned by the clerk.

Refusal to testify.

SEC. 149. No statement made by any such witness on such examination before either House, or a committee, is competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper, touching which he is examined, for the reason that his testimony or the production of such paper may tend to disgrace him, or render him infamous.

Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

Bill must be endorsed by Governor.

SEC. 150. Every bill must, as soon as delivered to the Governor, be indorsed as follows: "This bill was received by the Governor this ——— day of ———, eighteen———."

Approval of bills.

SEC. 151. When the Governor approves a bill he must set his name thereto, with the date of his approval.

Bills returned without approval.

SEC. 152. When a bill has passed both Houses of the Legislature and is returned by the Governor without his signature and with objections thereto, and upon a reconsideration passes both Houses by a two-thirds vote, it must be authenticated as having become a law by a certificate indorsed thereon, or attached thereto in the following form:

"This bill having been returned by the Governor with his objections thereto, and after reconsideration having passed both Houses, by a two-thirds vote, it has become a law, this ——— day of ———, A. D. ———," which indorsement, signed by the President of the Council and Speaker of the House, is a suffiicient authentication thereof. Such bill must then be deposited with the laws, in the office of the Secretary of the Territory.

Return when House not in session.

SEC. 153. If, on the day the Governor desires to return a bill without his approval and with his objections thereto to the House in which it originated, that House has adjourned for the day (but not for the sesion), he may deliver the bill with his message to the presiding officer, clerk, or any member of such House, and such delivery is as effectual as though returned in open session, if the Governor, on the first day the House is again in session, by message notifies it of such delivery and of the time when, and the person to whom such delivery was made.

SEC. 154. Every bill which has passed both Houses of the Legislature, and has not been returned by the Governor within three days, thereby becoming a law, is authenticated by the Governor causing the fact to be certified thereon by the Secretary of the Territory in the following form: "This bill having remained with the Governor three days (Sundays excepted), and the Legislature being in session, it has become a law this day of A. D.——," which certificate must be signed by the Secretary of this Territory and deposited with the laws in his office.

Bills remaining with the Governor more than three days.

SEC. 155. Every statute, unless a different time is prescribed therein, takes effect on the sixtieth day after its passage.

When Statutes take effect. 5 Ses., 162.

SEC. 156 Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

When resolutions take effect. 5 Ses., 162.

SEC. 157. Where a section or part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

Effect of amendment.

SEC. 158. No act or part of an act, repealed by another Act of the Legislature, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

Act repealed not revived by repeal of repealing act. Comp. laws, 858.

SEC. 159. The repeal of any law creating a criminal offense does not constitute a bar to the indictment and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment and punishment is expressly declared in the repealing act.

Repeal of laws creating offenses, effect of. Comp. laws, 858.

SEC. 160. All officers, boards of officers and commissioners, required by law to make reports to the Governor or Legislature, must send such reports to the Governor twenty days prior to the day on which the Legislative Assembly is appointed to meet in regular session, who may cause the same, together with his message, to be printed prior to the beginning of each session. They must also when required, make special reports and furnish such information as the Governor may require.

When Territorial officers to report. Act Jan'y 12, 1887.

CHAPTER IV.

EXECUTIVE OFFICERS.

SECTION
170. Designation and number of executive officers.
171. Territorial executive officers, how appointed.
172. Capitol trustees.

SECTION
173. Authority of.
174. Vacancies.
175. Janitor.
176. Night watchman.

SECTION 170. The number and designation of the civil executive officers are as follows:

Designation and number of civil executive officers.

A Governor;
A Secretary of the Territory;
A Controller;
A Treasurer;
An Attorney General;

A Superintendent of Public Instruction;
A Territorial Librarian;
Three Directors of the Insane Asylum;
A Medical Superintendent of the Insane Asylum.

Such other officers as fill offices created by, or under the authority of the general laws, for the government of counties, cities and towns, or of the charters, or special laws respecting the same, or of the health, school, election, road, or revenue laws.

Territorial executive officers, how appointed.

SEC. 171. It is the duty of the Governor during each bi-ennial session of the Legislative Assembly to nominate, and by and with the consent of the Legislative Council, to appoint suitable and qualified persons to the offices of Territorial Treasurer, Territorial Controller, and Attorney General, who may hold their respective offices until the end of the next bi-ennial session of the Legislative Assembly, and until their respective successors are appointed and qualified.

Capitol Trustees.

SEC. 172. (Sec. 1.) The Governor of Idaho Territory is hereby authorized to appoint a Board of Trustees, three in number, for the custody and maintainance of the Capitol buildings and grounds.

Authority of.

SEC. 173. (Sec 2.) That the Board of Trustees shall have full control of the building and grounds; to collect all rents for use of building due the Territory, to fix the amount of such rent, as in their best judgment will be just and equitable to all parties concerned; to receive and disburse any moneys appropriated by the Legislature, otherwise for the best interests of the Territory in furnishing rooms, improvements of grounds, etc.

Vacancies.

SEC. 174. (Sec. 3.) The Governor shall have power to fill any vacancy that may occur in their Board during the next two years, and report to the ensuing Legislature.

Janitor.

SEC. 175. (Sec. 4.) The Trustees shall have power to appoint a competent person for janitor, at a salary not exceeding seventy-five dollars per month; the janitor to have direct supervision over the whole building; take care of all the offices, halls and rooms, except Legislative halls and Supreme Court chambers during these sessions; and shall attend to the warming of the building, after the adjournment of the Legislature, commencing third quarter of 1888.

Night watchman.

SEC. 176. (Sec. 5.) The Trustees are impowered to employ a competent person as night watchman, at a salary not exceeding sixty dollars per month; the night watchman shall take charge of the building at 8 o'clock P. M. and remain in or around the building until 6 o'clock A. M. It shall be his duty to watch and guard the premises during the night; to visit every office or room occupied during the day, at frequent intervals, and, when necessary, to attend to the steam heater during the night. [Act Feby. 9, 1887, in effect immediately.]

CHAPTER V.

OF THE GOVERNOR.

SECTION
180. Powers and duties of Governor.
181. To transmit list of appointments to Legislature.
SECTION
182. Records in office of.
183. Persons acting as Governor.
184. Expenses for postage, etc.

SECTION 180. In addition to those prescribed by the Congress the Governor has the power, and may perform the duties prescribed in this and the following sections: Powers and duties of Governor.

1. To supervise the official conduct of all executive and ministerial officers.

2. To see that all offices are filled and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the Legislature therewith at its next session.

3. To make the appointments and supply the vacancies mentioned in this code.

4. He is the sole official organ of communication between the Government of this Territory and the government of any other State or Territory, or of the United States.

5. Whenever any suit or legal proceeding is pending against this Territory, or which may affect the title of this Territory to any property, or which may result in any claim against the Territory, he may direct the Attorney General to appear on behalf of the Territory.

6. He may require the Attorney General, or District Attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this Territory.

7. He may require the Attorney General to aid any District Attorney in the discharge of his duties.

8. He may offer rewards, not exceeding one thousand dollars each, payable out of the Territorial treasury, for the apprehension of any convict who has escaped from the Territorial prison, or of any person who has committed, or is charged with the commission of an offense, punishable with death. Comp. laws, 412.

9. To perform such duties respecting fugitives from justice as are prescribed by the Penal Code.

10. To issue and transmit election proclamations, as prescribed in this Code.

11. He may require any officer or board to make special reports to him, upon demand, in writing.

12. He has such other powers and may perform such other duties as are devolved upon him by this Code, or any other law of this Territory.

SEC. 181. Within ten days after the meeting of the Legislature the Governor must transmit to it a list of all the appointments made by him and not before communicated. To transmit list of appointments.

SEC. 182. The Governor must cause to be kept the following records: Records in office of.

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2. A register of statements in capital cases made to him, with his action thereon.

3. An account of all his disbursements of Territorial moneys, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

4. A register of all appointments made by him, with date of commission, names of appointee and predecessor.

5. A record of all persons confined in the Territorial prison, showing the name of the convict, his age and general appearance, when and where convicted, and of what crime, the time of his sentence, and when such time expires.

Persons acting as Governor.

SEC. 183. Every provision in the laws of this Territory in relation to the powers and duties of the Governor, and in relation to acts and duties to be performed by others toward him, extends to the person performing for the time being the duties of the Governor.

Expense of postage, expressage, etc.
9 Ses., 97

SEC. 184. The sum of one hundred dollars is appropriated and placed at the disposal of the Governor of Idaho Territory annually to defray expenses of postage and expressage, and other expenses attending the transmission of books, maps and public documents for the Territory, and the Controller is hereby authorized and required, on the certificate of the Governor that the bill is correct, to draw his warrant on the treasurer for such sum as may be certified to, not exceeding one hundred dollars per annum; and it is the duty of the treasurer to pay such warrants out of any moneys belonging to the Territory and not otherwise appropriated.

CHAPTER VI.

OF THE SECRETARY OF THE TERRITORY.

SECTION
190. Custody of records.
191. Duties of Secretary of the Territory.
192. Distribution of statutes and journals.
193. Distribution of reports of Supreme Court.
SECTION
194. To mark books distributed.
195. Expenses, etc., how paid.
196. Fees.
197. Official bond.

Custody of records.

SEC. 190. The Secretary of the Territory is charged with the custody.

1. Of all acts and Resolutions passed by the Legislature.
2. Of the Journals of the Legislature.
3. Of the Great Seal.
4. Of all books, records, deeds, parchments, maps, and papers, kept or deposited in his office pursuant to law.

Duties of Secretary of the Territory.

SEC. 191. It is the duty of the Secretary of the Territory:

1. To keep a register of and attest the official acts of the Governor.
2. To affix the Great Seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the Governor is required.
3. To record in proper books all conveyances made to the Territory, and all articles of incorporation filed in his office.
4. To receive and record in proper books the official bonds of all the officers whose bonds are required to be filed with him.
5. To take and file in his office receipts for all books distributed by him.

6. To certify to the Governor the names of those persons who have received at any election the highest number of votes for any office the incumbent of which is commissioned by the Governor.

7. To furnish on demand to any person paying the fees therefor a certified copy of all, or any part of any law, record, or other instrument filed, deposited, or recorded in his office.

8. To present to the Legislature, at the commencement of each session thereof, a full account of all purchases made and expenses incurred by him on account of the Territory.

Distribution of statutes and journals.

SEC. 192. Immediately after the laws, resolutions, and journals are bound, the Secretary of the Territory must distribute the same as follows:

1. To each department of the Government at Washington and of the Government of this Territory, one copy.

2. To the Library of Congress and the Territorial Library, two copies each.

3. To each of the States and Territories one copy.

4. To our Delegate in Congress, and to each of the Sudges of the Supreme Court of this Territory, one copy.

5. To each member of the Legislature, at the session when such laws and journals were adopted, one copy.

6. Of the laws alone, to the Auditor of each County, in the cheapest and most expeditious manner, to be by the sheriff distributed under the directions of the Auditor, one copy for the Board of Commissioners, one copy to each county officer and each Justice of the Peace.

Distribution of Supreme Court, reports.

SEC. 193. He must distribute of the bound volumes of the decisions of the Supreme Court, as soon as he receives them:

1. To each State, one copy.

2. To the Library of Congress and the Territorial Library, two copies each.

3. To each department of this Territory, and to each of the Supreme and Probate Judges, one copy.

4. To each District Attorney, one copy.

5. To the Reporter of the decisions, ten copies.

Books distributed, to be marked.

SEC. 194. The Secretary must indelibly mark each book distributed to officers in this Territory (except Legislative officers and the Reporter) with the name of the county to which, and the official designation of the officer to whom it is sent. Such books remain the property of the Terrtory, and must be, by the officers receiving them, delivered to their successors.

Expenses, how paid.

SEC. 195. The expenses incurred by him, in carrying into effect the provisions of the three preceding sections, must be audited by the comptroller and paid out of any moneys specially appropriated for that purpose.

Fees.

SEC. 196. The Secretary of the Territory, for services performed in his office, may charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, twenty cents per folio.

2. For affixing certificate and seal of the Territory, one dollar.

3. For filing articles of incorporation, five dollars.

4. For recording articles of incorporation, twenty cents per folio.

5. For issuing each certificate of incorporation, three dollars.

6. For receiving and recording each official bond, twenty cents per folio.

7. For each commission, or other document signed by the Governor and attested by the Secretary, (pardons excepted) five dollars.

8. For searching records and archives of the Territory, one dollar.

But no member of the Legislature or Territorial officer can be charged for any search relative to matter appertaing to the duties of their offices; nor must they be charged any fee for a certified copy of any law or resolution passed by the Legislature, relative to their official duties.

Official bond. SEC. 197. The Secretary of the Territory must execute an official bond to the Territory, in the sum of two thousand dollars, and must receive no fees under the laws of the Territory until such bond, approved by the Governor, is filed with the Controller.

CHAPTER VII.

CONTROLLER.

SECTION
205. General duties of.
206. Certficate of settlement.
207. Special duties connected with School Fund.
208. Order in which warrants must be drawn.
209. Proceedings against defaulters.
210. Printing of blanks.
211. Claims against the Territory.
212. Controller may examine witnesses on oath.
213. Vouchers and accounts preserved.
SECTION
214. What claims audited and paid.
215. Claims referred to Legislature.
216. Same.
217. Delinquents to be reported to Legislature.
218. Salary audited and paid.
219. Books and records open to Legislature.
220. Seal, copies of records evidence.
221. Salary.
222 .Official Bond.

General duties of Comp. laws, 798. SECTION 205. It is the duty of the Controller:

1. To Superintend the fiscal concerns of the Territory.

2. To report to the Governor at least twenty days preceding each regular session of the Legislature, a statement of the funds of the Territory, its revenues, and of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the Treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriations and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed.

3. To accompany his bi-ennial report with tabular statements, showing: 1. The amount of each appropriation for the two preceding fiscal years, the amounts expended, and the balance, if any. 2. The amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid; or due therefrom.

4. When requested, to give information in writing to either House of the Legislature relating to the fiscal affairs of the Territory or the duties of his office.

5. To suggest plans for the improvement and management of the public revenues.

6. To keep and state all accounts in which the Territory is interested.

7. To keep an account of all warrants drawn upon the Treasurer, and a separate account under the head of each specified appropriation, showing at all times the unexpended balance of such appropriation.

8. To keep an account between the Territory and the Treasurer, and therein charge the Treasurer with the balance in the Treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him.

9. To keep a register of warrants, showing the Fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered.

10. To audit all claims against the Territory in cases where there are sufficient provisions of law for the payment thereof.

11. To examine and settle the accounts of all persons indebted to the Territory, and to certify the amount to the Treasurer, and upon presentation and filing of the Treasurer's receipt therefor to give such person a discharge and charge the Treasurer therewith.

12. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

13. To require all persons who have received any moneys belonging to the Territory and have not accounted therefor to settle their accounts.

14. In his discretion to inspect the books of any person charged with the receipt, safe keeping, or disbursement of public moneys.

15. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the Territory of which an account is kept in his office, to render statements thereof to him; and all such persons must render such statement at such times and in such form as he may require.

16. To direct and superintend the collection of all moneys due the Territory, and institute suits in its name for all official delinquences in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the Territory, of which suits the Courts of Ada County have jurisdiction, without regard to the residence of the defendants.

17. To draw warrants on the Treasurer for the payment of moneys directed by law to be paid out of the Treasury; but no warrant must be drawn unless authorized by law. Every warrant must be drawn upon the Fund out of which it is payable, and specify the service for which it is drawn, and when the liability accrued.

18. To furnish the Territorial Treasurer with a list of warrants drawn upon the Treasury.

19. To have printed and forwarded to the Treasurer of each county blank Territorial licenses.

20. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office.

Act, Feb. 3, 1887.

21. To provide and transmit to the Assessor of each county the blank forms on which to make to the Controller, the annual report and statement of property as provided by section fourteen hundred and sixty-two (1,462.)

Certificate of settlement.

SEC. 206. The certificate mentioned in subdivision 11 of Section 205 must show by whom the payment is to be made, the amount thereof, and the Funds into which it is to be paid, and must be numbered in order, beginning with number one at the commencement of each fiscal year.

Special duties connected with school fund.

SEC. 207. The Controller must keep a separate account of the School Fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes.

Order on which warrants must be drawn.

SEC. 208. All warrants for claims which have been audited by and filed in his office must be drawn in the order of their allowance.

Proceedings against defaulters.

SEC. 209. Whenever any person has received moneys, or has money or other personal property which belongs to the Territory, or has been instructed with the collection, management, or disbursement of any moneys, bonds, ~~or~~ interest accruing therefrom, belonging to, or held in trust, by the Territory, and fails to render an account thereof to, and make settlement with the Controller within the time prescribed by law, or when no particular time is specified fails to render such account and make settlement, or who fails to pay into the Territorial Treasury any moneys belonging to the Territory, upon being required so to do by the Controller, within twenty days after such requisition, the Controller must state an account with such person, charging twenty-five per cent damages, and interest at the rate of ten per cent per annum from the time of failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated. But in case the Controller cannot for want of information state an account, he may, in any action brought by him, aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the Territory.

Printing of blanks. Comp. laws, 825. 9 Ses., 40.

SEC. 210. The Territorial Controller must, on the first day of August in each year, advertise that he will receive sealed proposals for contracts, for the printing and delivery at the Controller's office in Boise City, of all blanks required by said office during the year next ensuing, and such notice must state the date for delivery of such blanks; a description and schedule must be made out, and kept by the Controller in his office for the inspection of any person desirous of making proposals for the printing of the same. Said notice must be published in two newspapers, published in the Territory, at least once a week, for at least four successive weeks, and must state the time that all proposals will be opened; the proposals must be publicly opened and the award made to the lowest bidder, at the office of the Controller by the Territorial Treasurer' and Controller, on the day and hour named in the notice, which must be within five days from the last publication; and the blanks must be delivered within sixty days after the award; but this section does not authorize the expenditure of more than one thousand dollars in any one year. The person to whom the contract is awarded must, within ten days thereafter, file with said Controller, a bond in the sum of two thousand dollars, with at least two good and sufficient sureties to be approved by the Controller, and conditioned for the faithful performance of his contract in accordance with the terms thereof. And if he fails or refuses to give such bond, the contract must be awarded to the next lowest bidder, or the Controller may advertise for other proposals as he may think best. All blanks of every description, required to be furnished by the Controller, under any of the laws of the Territory, must be printed under a contract in accordance with the provisions of this chapter, and not otherwise; and no warrant must be drawn by the Controller upon the Territorial Treasurer for any sum for printing, except as herein provided.

Claims against the Territory.

Comp. laws, 800.

SEC. 211. All persons having claims against the Territory must exhibit the same, with the evidence in support thereof, to the Controller, to be audited, settled and allowed within two years after such claims shall accrue, and not afterward; and in all suits brought in behalf of the Territory, no debt or claim must be allowed against the Territory as a set off but such as have been exhibited to the controller, and by him allowed or disallowed, except only in cases where it is proved to the satisfaction of the court, that the defendant, at the time of trial, is in possession of vouchers which he could not produce to the Controller; or, that he was prevented from exhibiting the claim to the Controller by absence from the Territory, sickness or unavoidable accident; but the Controller shall in no case, audit a claim or set off which is not provided for by law.

Controller may examine witnesses on oath.

Comp. laws, 800.

SEC. 212. The Controller, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses, and others, on oath or affirmation, touching any matter material to be known in the settlement of such account, and for that purpose may issue writs of summons, and compel witnesses to attend before him and give evidence in the same manner and by the same means allowed by law to courts of record.

Vouchers and accounts preserved.

Comp. laws, 800.

SEC. 213. All accounts, vouchers, and documents settled, or to be settled, by the Controller must be preserved in his office, and copies thereof, authenticated by the official seal of the Controller, shall be given to any person interested therein who requires the same.

What claims audited and paid.

Comp. laws, 800.

SEC. 214. In all cases of specific appropriations, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the Territory, when audited, the Controller must draw warrants upon the Treasury for the amount; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrants must be drawn by the Controller, or paid by the Treasurer until appropriation is made by law for that purpose, nor must the whole amount drawn for and paid for any purpose or under any one appropriation ever exceed the amount appropriated.

Claims referred to Legislature. Comp. laws, 801.

SEC. 215. If any person interested is dissatisfied with the decision of the Controller, or any claim, account, or credit, it is the duty of the Controller, at the request of such person, to refer the same, with the reasons of his decision, to the Legislative Assembly.

Same. Comp. laws, 801.

SEC. 216. In all cases where the law recognizes a claim for money against the Territory, and no appropriation is made by law to pay the same, the Controller must audit and settle the same, and give the claimant a certificate of the amount thereof, under the official seal, if demanded, and report the same to the Legislative Assembly, with as little delay as possible.

Delinquents to be reported to the Legislature. Comp. laws, 801.

SEC. 217. The Controller must report to the Legislative Assembly, within ten days after the commencement of each regular session, a list of all the collectors of revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled according to law, and the reasons therefor.

Salary of Controller 14 ses.

SEC. 218. The salary of the Controller must be audited by the Territorial Treasurer, and paid by him in quarterly installments out of any money in the Treasury not otherwise appropriated, and he shall receive no other compensation whatever except the cost of necessary stationery, postage and expressage, for the Controller's and School Superintendent's business, and under no claim or pretext whatever, shall the Territorial Controller receive any other or greater compensation or moneys than as above enumerated;

Deputy 14 ses.

The Controller is authorized to appoint a deputy who shall receive no compensation. Act Feb. 10, 1887, in effect June 1, 1887.

Books and records open to Legislature. Comp. laws, 801.

SEC. 219. All the books, papers, letters, and transactions pertaining to the office of Controller, are open to the inspection of a committee of the Legislative Assembly, or either branch thereof, who shall examine all the Controller's accounts.

Seal, copies of records evidence. Comp. laws, 801.

SEC. 220. The Controller must keep a seal of office, for the authentication of all papers, writings, and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original.

Salary of Controller, 12 ses., 66.

SEC. 221. The annual salary of the Controller, to include all services rendered ex officio or as member of any board or commission as now required, or which may be by law hereafter devolved upon him, is one thousand eight hundred dollars.

Official bond, Comp. laws, 797.

SEC. 222. The Controller must execute an official bond in the sum of ten thousand dollars.

CHAPTER VIII.

TREASURER.

SECTION
230. General Duties.
231. Limitations upon receipt of money.
232. General Fund.
233. Salary of Treasurer.
234. Official Bond of.
235. Payment of Warrants.
236. Payment in Part.
237. Books and Papers Open to Inspection.
SECTION
238. Registration of Warrants.
239. Copies of Paper Evidence.
240. Refusal to Pay Warrant.
241. Compensation of.
242. Governor may Count Money.
243. Publication of Notices for Outstanding Warrants, Redemption of.

General duties. Comp. laws, 848.

SECTION 230. It is the duty of the Treasurer:

1. To receive and keep all moneys belonging to the Territory not required to be received and kept by some other person;

2. To file and keep the certificates of the Controller delivered to him when moneys are paid into the Treasury;

3. To deliver to each person paying money into the treasury a receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencment of each fiscal year;

4. To pay warrants drawn by the Controller out of the funds upon and in the order in which they are drawn;

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same;

6. To keep an account of all moneys received and disbursed;

7. To keep separate accounts of the different Funds;

8. To report to the Controller, on the last day of each month, the amount disbursed for redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each Fund;

9. At the request of either House of the Legislature, or of any committee thereof to give information in writing as to the condition of the Treasury or upon any subject relating to the duties of his office.

10. To report to the Governor at the time prescribed in this code, the exact balance in the Treasury to the credit of the Territory, with a summary of the receipts and payments of the Treasury during the two preceding fiscal years;

11. To authenticate with his official seal all writings, and papers issued from his office;

12. To discharge such other duties as may be imposed upon him by law.

SEC. 231. He must receive no money into the Treasury unless accompanied by the certificate of the Controller. Limitation upon receipt.

SEC. 232. The General Fund consists of moneys received into the Treasury and not specially appropriated to any other Fund. General fund.

SEC. 233. The annual salary of the Territorial Treasurer is one thousand dollars. Salary of Treasurer.

SEC. 234. The Treasurer must execute an official bond in the sum of sixty-five thousand ($65,000.00) dollars. Act Feb. 10, 1887, in effect immediately. Bond of Treasurer. 14 ses.

Payment of warrants. 8 ses., 849.

SEC. 235. The Territorial Treasurer must pay warrants on any of the several funds in his office in their regular order, as prescribed by law.

Payment in part, 8 ses., 849.

SEC. 236. When any warrant is presented for payment, and there is not money on hand to pay the warrant in full, the Treasurer must pay to the holder thereof such sums only as may be in the fund upon which the warrant is drawn, and divide the warrant, retaining that portion on which the number of the warrant is, and require the owner of the warrant to receipt for the amount received, on the back of said portion; the other part of the warrant must be returned to the owner thereof, with the following endorsement on the back: No. (in figures), number of warrant written, total amount of warrants to date, amount paid on warrant, balance due on warrant on the date of partial payment, date of partial payment, name of treasurer. And said portion of warrant, so endorsed, constitutes a charge against the fund on which it was originally drawn for the amount of the balance as shown by the endorsement, and is payable out of the first money in said fund; and the above provided division of any warrant in no way destroys its validity; but nothing in this chapter must be construed as allowing the payment of interest on interest.

Books and papers open to inspection. 8 ses., 850.

SEC. 237. The books, papers, letters and transactions pertaining to the office of Treasurer, are at all times during office hours, open to the inspection of a committee of the Legislative Assembly, or either branch thereof, to examine and settle all accounts, or to take copies of the same, and to count all moneys; and when the successor of any such treasurer is appointed and qualified, the Territorial Controller must examine and settle all the accounts of such treasurer, remaining unsettled, and give to him a certified statement, showing the balance of moneys, securities, and effects for which he is accountable, and which have been delivered to his successor, and report the same to the Legislative Assembly.

Registration of warrants. 8 ses., 850.

SEC. 238. It is the duty of the Territorial Treasurer to keep a register of the Territorial warrants presented to him and not paid for want of funds, in the order of their presentation, and write across the back of the same: "Presented and not paid for want of funds;" said endorsement to be dated and signed by the Treasurer, and said warrants draw interest at the rate of ten per cent per annum, from the date of presentation, until paid.

Copies of paper, evidence. 8 ses., 850.

SEC. 239. The Treasurer must keep a seal of office for the authentication of all of all papers, writing and documents required by law to be certified by him; and copies, so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original documents.

Refusal to pay warrants. 8 ses., 850.

SEC. 240. If the Territorial Treasurer willfully and unlawfully refuses to pay any warrant lawfully drawn upon the treasury, he forfeits and must pay fourfold the amount, to be recovered by action against the Treasurer and his sureties on his official bond, or otherwise.

Compensation of treasurer. 8 ses., 851.

SEC. 241. The Treasurer may receive as a compensation for his services, the sum of one thousand dollars per annum, to be audited quarterly by the Territorial Controller, and retained by said Treasurer, and said sum is in full and only compensation for all services rendered by the Territorial treasurer, under all laws now in force or which may be hereafter passed, imposing duties on said treasurer, including his duties as Territorial Prison Commissioner, and his duties under an act "to provide for funding the indebtedness of the Territory of Idaho," approved January 12, 1886, and said Treasurer must not be allowed any pay whatever for office rent, fuel, lights or stationery.

Governor may count money. 8 ses., 851.

SEC. 242. The Governor of the Territory is hereby authorized and directed, at any time whenever he considers it necessary for the safe keeping and disbursement of public moneys, to make an examination of the amount in the possession of the Territorial Treasurer, and for that purpose must have access to the same.

Publication of notice for redemption of outstanding warrants. 10 ses., 31.

SEC. 243. The sum of one hundred dollars is hereby annually appropriated out of any moneys in the Territorial Treasury, not otherwise appropriated, for the purpose of enabling the Territorial Treasurer of Idaho Territory to defray the expenses of publishing notices for the redemption of out standing Territorial Warrants, when the sum to be advertised is five hundred dollars or more, as they may become due, and for the purpose of providing the necessary stationery for his office, and the Territorial Controller is authorized to draw his warrant in favor of the Territorial Treasurer for the above sum annually.

CHAPTER IX.

ATTORNEY GENERAL.

SECTION
250. General Duties.
251. Salary.
SECTION
252. Official Bond.

General duties. 13 ses., 31.

SECTION 250. It is the duty of the Attorney General:

1. To attend the Supreme Court and prosecute or defend all causes to which the Territory or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the Territory or some officer thereof acting in his official capacity:

2. After judgment in any of the causes referred to in the preceding sub-division, to direct the issuing of such process as may be necessary to carry the same into execution:

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the Territory or to any county:

4. To keep a docket of all causes in which he is required to appear, which must during business hours be open to the inspection of the public, and must show the county, district, and Court in which the causes have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of the proceedings, and, when prosecuted to judgment, a memorandum of the judgment; of any process issued thereon, and whether satisfied or not, and if not satisfied, the return of the Sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of the proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution

thereof, if the same has been executed, and if not executed, of the reasons of the delay or prevention.

5. To exercise supervisiary powers over District Attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge.

6. To give his opinion in writing, without fee, to the Legislature or either House thereof, and to the Governor, the Territorial Secretary, Controller, Treasurer, the Trustees or commissioners of Territorial Institutions, when required, upon any question of law relating to their respective offices.

7. When required by the public service, to repair to any county in the Territory and assist the District Attorney thereof in the discharge of his duties.

8. To bid upon and purchase, when necessary, in the name of the Territory, and under the direction of the Controller, any property offered for sale under execution issued upon judgments in favor of or for the use of the Territory, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding sub-division has been sold under a prior judgment, or is subject to any judgment, lien, or incumbrance taking precedence of the judgment in favor of the Territory, under the direction of the Controller to redeem such property from such prior judgment, lien, or incumbrance; and all sums of money necessary for such redemption must, upon the order of the Controller, be paid out of any money appropriated for such purposes.

10. When in his opinion it may be necessary for the collection or enforcement of any judgment herein before mentioned, to institute and prosecute, in behalf of the Territory, such suits or other proceedings as he may find necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the Controller, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the other duties prescribed by law.

12. To report to the Governor, at the time required by this Code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from District Attorneys.

Salary. 13 ses., 32.

SEC. 251. The annual salary of the Attorney General is two thousand dollars.

Bond.

SEC. 252. The Attorney General must execute an official bond in the sum of five thousand dollars.

CHAPTER X.

CLERK OF THE SUPREME COURT AND CLERKS OF THE DISTRICT COURTS.

SECTION
260. General Duties.
261. May appoint deputies.
262. Fees.
263. Office and stationery.
264. File papers.
265. Deliver books and papers to successor.
266. Administer oaths.
267. Must not be an Attorney, etc.
268. May take Acknowledgements.
SECTION
269. Official bond.
270. Duties of Clerk of District Court
271. Appointment of deputies.
272. Duties of deputy.
273. Must attend court.
274. Official bond.
275. Neglect or omission.
276. Fees.

SECTION 260. The Clerk of the Supreme Court must perform such duties as are prescribed in the Penal Code and Code of Civil Procedure, and such duties as may be required of him by the rules and practice of the Court.

General duties.

SEC. 261. He may appoint a Deputy.

May appoint deputy.

SEC. 262. The Clerk of the Supreme Court may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law:

Fees.

Comp. laws, 821.

For filing each transcript of record from an inferior Court, one dollar; for entering any motion, rule, or order, fifty cents; for entering judgement, for each folio, thirty cents; for each certificate given at request, and under seal, fifty cents; for copy of record, or opinion of court, or other paper, for each folio, twenty cents; for entering each cause on calender, and making copy for bar, fifty cents; for filing each paper, twenty-five cents; for every remittitur or mandate, for each folio, twenty cents; for certificate of admission, as Attorney or Counselor, including seal, oath and order, two dollars; for administering oaths, or affirmation, including jurat, twenty-five cents; for taking and writing out acknowledgements of deeds, or other instruments, for each signature, including seal, fifty cents; for recording opinion of Court, each folio, twenty cents; for issuing any process of Court, including seal, one dollar.

SEC. 263. He must keep his office in the Capitol Building, and the Territorial controller must audit his bills for the necessary books and stationery for Territorial business, and draw his Warrant on the Territorial Treasurer for the amount, who shall pay the same.

Office and stationery.
Comp. laws, 820.

SEC. 264. He must file all papers that may be legally lodged with him for that purpose, noting the day, month, and year when so filed.

File papers.
Comp. laws, 821.

SEC. 265. He is responsible for the safe custody and delivery to his successors of all books and papers belonging to his office.

Deliver books and papers to successor.
Comp. laws, 821.

SEC. 266. He may administer oaths in every case where an oath is authorized by law.

Administer oaths.
Comp. laws, 821.

SEC. 267. He must not practice as an attorney or counsellor, nor be surety or bail in any case in the court of which he is clerk.

Must not be an attorney, etc.
Comp. laws, 821.

SEC. 268. He is authorized to take acknowledgments of deeds and instruments of writing under the seal of his office.

May take acknowledgments.
Comp. laws, 821.

SEC. 269. The Clerk of the Supreme Court must execute an official bond in the sum of five thousand dollars.

Bond.
Comp. laws, 820.

Duties of clerk of District Court. Comp. laws, 791.

SEC. 270. The Clerk of the District Court for each Judicial District must perform such duties as are prescribed in the Code of Civil Proceedure and in the Penal Code, and such duties as may be required of him by the rules and practice of the court.

Appointment of deputies. Comp. laws, 791.

SEC. 271. He must appoint a deputy resident in each county of his district. The appointment must be in writing and filed in the office of the Recorder of the county for which the deputy is appointed, and the appointment may be revoked at will by writing filed in the same office.

Duties of deputy. Comp. laws, 791.

SEC. 272. The deputy must reside at the county seat of the county for which he is appointed, and must perform all the duties of the office in the absence of his principal. All acts done and process issued by the deputy must be in the name of his principal.

Must attend court. Comp. laws, 791.

SEC. 273. The clerk must, in person or by deputy, attend every term of the District Court held in his district.

Official bond Comp laws, 791.

SEC. 274. Before entering upon the discharge of the duties of his office the Clerk must execute and deposit with the Territorial Controller an official bond to the Territory in the penal sum of five thousand dollars, with two sufficient sureties, to be approved by the Judge of the district, conditioned that he will faithfully perform the duties of his office and at all times account for and pay over all moneys in his hands as Clerk; and the penalty of such bond may at any time be increased by the Judge of the district. The Clerk may require a bond from any deputy.

Neglect or omission. Comp. laws, 791.

SEC. 275. For any wrongful act or omission to perform any duty imposed by law, by himself or his deputy, the Clerk is liable on his official bond to any person injured.

Fees. Comp. laws, 791-2.

SEC. 276. The Clerk of the District Court may lawfully charge, demand and receive the following fees for services rendered, in discharging the duties imposed on him by law:

For entering each suit on the register of actions, and making the necessary entries therein, thirty cents;

For issuing every summons, attachment, writ of injunction, or other original writ or process, fifty cents;

For issuing each subpœna, fifteen cents;

For filing each paper, fifteen cents;

For entering of record every motion, rule, order, default, nonsuit, or discontinuance, twenty cents per folio.

For entering every cause on the calander, and making a copy thereof for the bar, for each term of court, fifty cents;

For calling and swearing every jury, one dollar.

For receiving and entering each verdict of a jury, fifty cents.

For entering every final judgment, for each folio, twenty cents.

For making a copy of any paper or record, including certificate, when required, for each folio, twenty cents.

For making and filing judgment roll, fifty cents.

For every certificate under seal, twenty-five cents.

For issuing every commission to take testimony, including certificate and seal, one dollar.

For taking down testimony or depositions, including oath, certificate and seal, for each folio, twenty cents.

For issuing every execution, or other final process, fifty cents.

For issuing every decree or order of sale, including certificate and seal, for each folio, twenty cents.

For receiving and filing remittitur and accompanying papers, from the Supreme Court, twenty-five cents.

For taking each bond required by law, twenty-five cents.

For acknowledgment of deed, or other instrument, including seal, fifty cents.

For swearing witnesses, fifteen cents.

For taking affidavit, including jurat, fifteen cents.

For entry of each case in judgment docket, fifty cents.

For entering satisfaction of judgment, twenty-five cents.

For filing and entering transcript of judgment from justice's court, fifty cents; for all services not herein enumerated, and of him required or which he is called on to perform such fees as are herein allowed for similar services.

For the trial of each issue, when the charge is felony, five dollars.

For the trial of each issue, when the charge is misdemeanor, three dollars.

He shall receive no other fees whatever in a criminal action, except for copies of papers and taking testimony, for each folio, twenty cents.

For final papers of naturalization, five dollars, which includes all services in swearing witnesses, making minutes, recording, certifying, and issuing such papers under seal.

CHAPTER XI.

NOTARIES PUBLIC.

SECTION
285. By whom appointed.
286. Oath of office and bond.
287. Oath and bond to be filed.
288. Restrictions as to residence.
289. General duties of.
290. Protests, evidence of facts stated.
291. Records of on death or resignation.
292. Certified copies of records of a predecessor.
293. Fees.
294. Certificate of filing bond and oath.
295. Liabilities on official bond.

SECTION 285. The Governor may appoint and commission in each county as many notaries public as he may deem necessary, who shall hold said office for the term of four years.

By whom appointed. Comp. laws, 816.

SEC. 286. Each notary public before entering upon the duties of his office must take the usual oath of office, which must be endorsed upon his bond, and must execute a bond to the Territory of Idaho in the sum of one thousand dollars, with two or more sufficient sureties, to be approved by the probate judge of the county for which said Notary may be appointed.

Oath of office and bond. Comp. laws, 816.

SEC. 287. The bond with the oath of office endorsed thereon and duly attested together with a specimen of the signature, and impress of the official seal of the appointee must be filed in the office of the Territorial Secretary. At the issuance of any commission each appointee must pay the sum of ten dollars to said Secretary, who must keep an account of the same and pay one-half thereof to the Territorial Library fund, and may apply the residue as his fees in that behalf.

Oath and bond to be filed. Comp. laws, 817.

SEC. 288. Every person appointed as Notary Public must at the time of his appointment, be an elector of the county for which he is appointed, and must continue to reside in such county.

Restrictions as to residence. Comp. laws, 819.

General duties of.
Comp laws, 817-18.

SEC. 289. It is the duty of a Notary Public:

1. When requested, to demand acceptance and payment of Foreign, Domestic and Inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other Territory, State, Government or Country, may be performed by Notaries:

2. To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment indorsed on or attached to the instrument:

3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this Territory:

4. To keep a record of all official acts done by him under the first subdivision of this section:

5. When requested, and upon payment of his fees therefor, to make and give a certified copy of any record in his office:

6. To provide and keep an official seal, upon which must be engraved his name, the words "Notary Public," and the name of the county for which he is commissioned:

7. To authenicate with his official seal all official acts.

Protests, evidence of facts stated.
Comp laws, 818.

SEC. 290. The protest of a Notary, under his hand and official seal, of a bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note and specifying the mode of giving such notice and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the postoffice nearest thereto, is prima-facie evidence of the facts contained therein.

Records of, on death or resignation.
Comp. laws, 819.

SEC. 291. If any Notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the Recorder of the County, who must deliver them to the Notary's successor when qualified.

Copies of records of a predecessor.
Comp. laws, 819

SEC. 292. Every Notary having in his possession the records and papers of his predecessor in office, may grant certificates or give certified copies of such records and papers, in like manner and with the same effect as such predecessor could have done.

Fees.
Comp laws, 819.

SEC. 293. The fees of Notaries are as follows:

For drawing and copying every protest for non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft or check, three dollars; for drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft or check, one dollar; for recording every protest, fifty cents; for drawing any paper for which provision is not herein made, for each folio, thirty cents; for taking an acknowledgment or proof of a

Certificate of filing bond and oath.
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deed or other instrument, to include the seal and the writing of the certificate, fifty cents; for administering and certifying an oath, twenty-five cents; for every certificate under seal, to include writing the same, fifty cents.

SEC. 294. Each Notary, as soon as he has taken his official oath and filed his official bond, must transmit a certificate of the facts, under the hand and seal of the Territorial Secretary, to the Clerk of the District Court for his County.

SEC. 295. For the official misconduct or neglect of a Notary Public, he and the sureties on his official bond are liable to the parties injured thereby for all the damages sustained.

Liabilities on bond.
Comp. laws, 818.

CHAPTER XII.

COMMISSIONERS OF DEEDS.

SECTION
300. Governor to Appoint.
301. General Duties of.
302. Effect of Acts Done by Commissioners.
303. Oaths, When to be Filed.

SECTION
304. Fees.
305. Copy of this Chapter to be Transmitted to Appointee.
306. Fees of Secretary.

SECTION 300. The Governor may appoint in each State or Territory of the United States, or in any foreign State, one or more Commissioners of Deeds, to hold office for the term of four years from and after the date of their commission.

Governor to appoint.
Comp. laws, 674.

SEC. 301. Every Commissioner of Deeds has power, within the State for which he is appointed.

General duties of.
Comp. laws, 674.

1. To administer and certify oaths;
2. To take and certify depositions and affidavits;
3. To take and certify the acknowledgment or proof of power of attorney, mortgages, transfers, grants, deeds, or other instruments for record;
4. To provide and keep an official seal, upon which must be engraved the words "Commissioner for the Territory of Idaho," and the name of the Commissioner;
5. To authenticate, with his official seal, all his official acts.

SEC. 302. All oaths administered, depositions and affidavits taken, and all acknowledgments and proofs certified by Commissioners of Deeds, have the same force and effect, to all intents and purposes, as if done and certified in this Territory by any officer authorized by law to perform such acts.

Effect of acts done by Commissioners.
Comp. laws, 674.

SEC. 303. The official oaths of Commissioners of Deeds must be filed in the office of the Secretary of the Territory within six months after they are taken.

Oath, when to be filed.
Comp. laws, 674.

SEC. 304. The fees of Commissioners of Deeds are the same as those prescribed for Notaries Public.

Fees.

SEC. 305. The Secretary of the Territory must transmit, with the commission to the appointee, a certified copy of this chapter.

Copy of chapter to be transmitted.

SEC. 306. The Secretary of the Territory is entitled to receive a fee of five dollars for issuing each commission under the provisions of this act to be paid by the party applying therefor.

Fees of Secretary.
Comp. laws, 675.

CHAPTER XIII.

DISQUALIFICATIONS.

SECTION
315. Age and Citizenship.
316. Other Disqualifications, Delegate to Congress, and Member of the Legislature.

Age and citizenship. 13 ses., 58.

SECTION 315. No person is capable of holding a civil office who at the time of his election or appointment is not of the age of twenty-one years, and a citizen and elector of this Territory, for six months prior to his election or appointment.

Other disqualifications. Delegate, etc. 13 ses., 107.

SEC. 316. No person is eligible to the office of Delegate to Congress, to a seat as member of the Council or House of Representatives, or any Territorial office, unless he has been a resident of the Territory one year prior to the time of election.

CHAPTER XIV.

RESTRICTIONS UPON THE RESIDENCE OF OFFICERS.

SECTION
325. Certain Officers must reside in Boise City.
326. Absence from the Territory.
327. No Allowance for Rent, Fuel, or Lights.

Officers to reside in Boise City. 8 ses. 820.

SECTION 325. The following officers must reside at and keep their offices in Boise City:

The Governor;
Secretary of the Territory;
Controller;
Territorial Treasurer;
Attorney General;
Superintendent of Public Instruction, and
Clerk of the Supreme Court.

Absence from Territory.

SEC. 326. No Territorial officer must absent himself from the Territory for more than sixty days, unless upon business of the Territory, or with the consent of the Legislature.

No allowance for rent, fuel or lights.

SEC. 327. The officers enumerated in the first section of this chapter may occupy without rent or charge the offices provided for them respectively in the Capitol Building; and no pay or allowance must be made to any one of said officers for rent, fuel, or lights whether such officer occupy such office or not.

CHAPTER XV.

NOMINATIONS AND COMMISSIONS OF OFFICERS.

SECTION
335. Nominations to Council must be in writing.
336. Resolution of Concurrence.
337. Commissions by the Governor.
SECTION
338. Form of Commissions.
339. Other Commissions.
340. Appointment of Deputies, etc., how made.

SECTION 335. Nominations made by the Governor to the Legislative Council must be in writing, designating the residence of the nominee and the office for which he is nominated.

Nominations to be in writing.
N. S.

SEC. 336. Whenever the Council concurs in a nomination, its Secretary must immediately deliver a copy of the resolution of concurrence, certified by the President and Secretary to the Governor.

Resolution of concurrence.
N. S.

SEC. 337. The Governor must commission:

1. All officers of the militia:
2. All officers appointed by the Governor, or by the Governor with the advice and consent of the Council.

Commissions by the Governor.
N. S.

SEC. 338. The Commissions of all officers commissioned by the Governor must be issued in the name of the people of this Territory, and must be signed by the Governor and attested by the Secretary of the Territory, under the Great Seal.

Form of commissions.
N. S.

SEC. 339. The commissions of all officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

Other Commissions.
N. S.

SEC. 340. The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing, filed in the office of the appointing power or the office of its clerk.

Appointment of deputies, etc., how made.
N. S.

CHAPTER XVI.

OATH OF OFFICE.

SECTION
350. Official Oath.
352. Oath of members of the Legislature.
353. Oath, when taken.
354. Oath, before whom taken.
SECTION
355. Oath, by County officers.
356. Oath, when filed.
357. Oath of Deputies, etc.

SECTION 350. Before any officer, elected or appointed to fill any office, created by the laws of this Territory, enters upon the duties of his office, he must take and subscribe an oath, to be known as the "Official Oath," which is as follows:

Official oath.
8 ses., 324.

I do swear (or affirm) that I will support the Constitution of the United States, the Organic Act and the laws of this Territory, and that I will faithfully discharge all the duties of the office of————according to the best of my ability, and I do further swear (or affirm) that I am a citizen of the United States, over the age of twenty-one years; that I had actually resided in Idaho Territory for the period of four months and in this county thirty days next preceding the date of my election (or appointment); that I am not a member of any order, sect or organization, which teaches, advises or encourages the practice of bigamy or polygamy or any other crime defined by law as a duty or privilege resulting or arising from the faith or practice of such order, sect, or organization, or that teaches, counsels, encourages, or advises any person or persons to commit the crime of bigamy or polygamy, or any other crime defined by law as a religious duty; that I am not a bigamist or a polygamist, and that I do not cohabit with any woman not my lawful wife; that I do not either publicly or privately teach, counsel, encourage or advise any person or persons to enter into bigamous or polygamous relations or into the relation known as "Plural" or "Celestial Marriage;" that I regard the Constitution of the United States and the laws thereof and of this Territory, as interpreted by the Courts, as the Supreme law of the land, and that I will support and uphold the same, the teachings of any order, sect, or organization to the contrary notwithstanding, so help me God.

Oath of members of Legislature.

SEC. 352. Members of the Legislature may take the oath of office at any time during the term for which they were elected.

Oath, when taken.

SEC. 353. Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed and filed within ten days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given.

Oaths, before whom taken.

SEC. 354. Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

Oath by county officers. 13 ses., 57.

SEC. 355. The oath of office must be taken by County Commissioners before the County Rocorder of their respective counties on the second Monday of January succeeding each general election; and on the next judicial day the other county officers must take and subscribe the official oath before the Chairman of the Board.

Oath, where filed.

SEC. 356. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially directed, as follows:

1. The oath of all officers whose authority is not limited to any particular county, in the office of the Secretary of the Territory:

2. The oath of all officers elected or appointed for any county, district or precinct, in the offices of the Recorder of their respective counties.

Oath of deputies, etc.

SEC. 357. Deputies, clerks, and subordinate officers must take and file an official oath before entering upon their duties.

CHAPTER XVII.

PROHIBITIONS APPLICABLE TO CERTAIN OFFICERS.

SECTION
365. Certain officers not to be interested in contracts.
366. Nor purchasers or vendors at certain sales.
367. Contracts in violation, voidable.

SECTION
368. Certain officers prohibited from dealing in script, etc.
369. Auditing officers, duties of.
370. Treasurer, duties of.
371. When settlements must be withheld.

Officers not to be interested in contracts.

SECTION 365. Members of the Legislature, Territorial county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

SEC. 366. Territorial, county, district, precinct and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

Purchasers at certain sales, not to be.

SEC. 367. Every contract made in violation of any of the provisions of the two preceding sections may be avoided at the instance of any party except the officer interested therein.

Contracts in violation, voidable.

SEC. 368. The Territorial Treasurer and Controller, the several county, city, district or precinct officers of this Territory, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, of any person or persons whatever, any Territorial, county, or city warrants, script, orders, demands, claims,or other evidences of indebtedness against the Territory, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy or clerk, and evidences of the funded indebtedness of such Territorial county, city, district or corporation.

Officers prohibited from dealing in script, etc.
Comp. laws, 667.

SEC. 369. Every officer whose duty it is to audit and allow the accounts of other Territorial, county, district, city or precinct officers, must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this chapter.

Auditing officers, duties of.

SEC. 370. Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the Territory, county, city or district, when the same has been purchased, sold, received or transferred contrary to any of the provisions of this chapter.

Duties of Treasurer.
Comp. laws, 668.

SEC. 371. Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is to be settled. audited, or paid by him, has violated any of the provisions of this chapter, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation.

Settlements withheld when.
Comp. laws, 668.

CHAPTER XVIII.

SALARIES OF OFFICERS WHEN TITLE IS CONTESTED.

SECTION
380. Title Contested, Salary must not be Paid.
SECTION
381. Pendency of Suit must be Certified by the Clerk.

SECTION 380. When the title of the incumbent of any office in this Territory is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

Title contested, salary must not be paid.
N. S.

SEC. 381. As soon as such proceedings are instituted, the Clerk of the Court in which they are pending must certify the facts to the officers, whose duty it would otherwise be to draw such warrant or pay such salary.

Pendency of suit must be certified by clerk.

CHAPTER XIX.

Bonds of Officers.

SECTION
390. Time for Filing Bond.
391. Approval, Filing and Recording Bonds of Territorial Officers.
392. Bonds of County and Township Officers, Approval, Filing and Recording.
393. Record of Official Bond.
394. Approval must be Indorsed on Bond.
395. Bond not to be Filed before Approval.
396. Condition of Bond.
397. Justification of Sureties.
398. Sureties for less than the Penal sum.
399. Custody of Official Bonds.
400. Form of Bonds.
401. Construction of Bonds.
402. Same.
403. Suit on Bonds.
404. Same.
405. Defects in Form, Approval, Filing, etc., not to Vitiate.
406. Insufficiency of Sureties.
407. Form of Additional Bond.

SECTION
408. Force of Original Bond.
409. Liability of Officers and Sureties.
410. Separate Judgments on Bonds.
411. Contribution between Sureties.
412. Discharge of Sureties.
413. Persons Appointed to fill Vacancies, Bonds of.
414. Release of Sureties.
415. Same.
416. Same.
417. When Office may be Declared Vacant for want of Official Bond.
418. Effect of Release of Surety, on Remaining Sureties.
419. Effect of Discharge of Sureties.
420. Provisions of Chapter apply to Bonds of Administrator, etc.
421. Bonds of Receivers, Assignees, etc.
422. Actions on Official Bonds, Effect of.
423. Same.
424. Bonds of Deputies, Clerks, etc.

Time for filing bond. Comp. laws, 807.

SECTION 390. Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by Statute.

Approval, etc. of bonds. Comp. laws, 808.

SEC. 391. Unless otherwise prescribed by Statute, the official bonds of Territorial officers must be approved by the Governor, and filed and recorded in the office of the Secretary of the Territory.

Bonds of county officers, approval, etc. Comp. laws, 808.

SEC. 392. Unless otherwise prescribed by Statute, the official bonds of county and precinct officers must be approved by the board of County Commissioners, and filed and recorded in the office of the County Recorder, and must be in such penalties as is required by law, or, when not fixed by law, as required by the board.

Record of official bonds. Comp. laws, 808.

SEC. 393. Official bonds must be recorded in a book kept for that purpose, and entitled "Record of Official Bonds."

Approval must be endorsed on bond. Comp. laws, 808.

SEC. 394. The approval of every official bond must be indorsed thereon and signed by the officer approving the same.

Bond not to be filed before approval. Comp. laws, 808.

SEC. 395. No officer with whom any official bond is required to be filed must file such bond until approved.

Condition of bond. Comp. laws, 812.

SEC. 396. The condition of an official bond must be that the principal will well, truly and faithfully perform all official duties then required of him by law, and also all such additional duties as may be imposed on him by any law of the Territory. Such bond must be signed by the principal and at least two sureties, to the full penalty of the bond.

14 ses.

No person shall be accepted as surety, on such bond, except he shall during the year immediately preceding have been assessed and paid taxes, in his own right, upon property to the amount for which he has become surety. Act Feby. 3, 1887, in effect June 1, 1887.

Justification of sureties.

SEC. 397. The officer whose duty it is to approve official bonds required of Territorial, county, district or precinct officers, must not accept or approve any such bond unless each of the sureties severally justify, before an officer authorized to administer oaths, as follows:

1. On a bond given by a Territorial officer, that such surety is a resident and free-holder or house-holder within this Territory; and on a bond given by a county, district, or pre-

cinct officer, that such surety is a resident and free-holder or house-holder within such county or within an adjoining county:

2. That such surety is worth the amount for which he becomes surety over and above all his debts and liabilities in unincumbered property situated within this Territory, exclusive of property exempt from execution and forced sale.

Sureties for less than penal sum. Comp. laws, 809-10.

SEC. 398. When the penal sum of any bond required to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions of not less than five hundred dollars thereof, making in the aggregate at least two sureties for the whole penal sum. And if any such bond becomes forfeited, an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable.

The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribution to his co-sureties in proportion to the amount for which he is liable.

Custody of official bonds. Comp. laws, 808.

SEC. 399. Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

Form of bonds. Comp. laws, 808.

SEC. 400. All official bonds must be in form joint and several, and made payable to the Territory of Idaho in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

Construction of bonds. Comp. laws, 810.

SEC. 401. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy, or clerk.

Same. Comp. laws, 810.

SEC. 402. Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

Suit on bonds. Comp. laws, 810.

SEC. 403. Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the Territory of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

Same. Comp. laws, 810.

SEC. 404. No such bond is void on the first recovery of a judgment thereon; but suit may be afterwards brought, from time to time, and judgment recovered thereon by the Territory of Idaho, or by any person to whom a right of action has accrued against such officer and his sureties, until the whole penalty of the bond is exhausted.

Defects in form, etc. Comp. laws, 810.

SEC. 405. Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and his sureties; but they are equitably bound to the Territory, or a party interested, and the Territory or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing, and recover the proper and equitable demand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

Insufficiency of sureties. Comp. laws, 809.

SEC. 406. Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the Judge, Court, Board, Officer, or other person whose duty it is to approve the official bond of any officer, that the sureties or any one of them, has, since such bond was approved, died, removed from the Territory, become insolvent, or from any other cause has become incompetent or insufficient surety on such bond, the Judge, Court, Board, Officer, or other person may issue a citation to such officer, requiring him, on a day therein named, not less than three nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the Judge, Court, Board, officer, or other person must make an order vacating the office, and the same must be filled as provided by law.

Form of additional bond. Comp. laws, 812.

SEC. 407. The additional bond must be in such penalty as directed by the Court, Judge, Board, officer, or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

Form of original bond. Comp. laws, 812.

SEC. 408. In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

Liabilities of officers. Comp. laws, 812.

SEC. 409. The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit.

Separate judgments on bonds. Comp. laws, 812.

SEC. 410. If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively, but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

Contribution between sureties. Comp. laws, 812.

SEC. 411. Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

Discharge of sureties. N. S.

SEC. 412. Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same, to be done if such officer will execute a new bond with sufficient sureties in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond such first sureties are exonerted from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same, and may be enforced in like manner as the liability of the sureties in the original bond.

Persons appointed to fill vacancies, bonds of. Comp. laws, 813.

SEC. 413. Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

Release of sureties. Comp. laws, 813.

SEC. 414. Any surety on the official bond of a city, district, precinct, county or Territorial officer may be relieved from liabilities thereon afterwards accruing by complying with the provisions of the three sections following.

Release of sureties. Comp. laws, 813.

SEC. 415. Such surety must file with the Judge, Court, Board, Officer or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterwards arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same.

Same. Comp. laws, 813.

SEC. 416. A body of the statement must be served on the officer named in such official bond and due return or affidavit of service made thereon as in other cases.

When office may be declared vacant, etc. Comp. laws, 813.

SEC. 417. In twenty days after the service of such notice the Judge, Court, Board, Officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law, as in other cases of vacancy of such office, unless such officer has before that time given good and ample surety for the discharge of all his official duties as required originally.

Remaining sureties reliable. N. S.

SEC. 418. The release, discharge, voluntary withdrawal, or incompentency of a surety on any official bond does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

Discharge of suretes, effect of. Comp. laws, 813.

SEC. 419. No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order releasing him from liability, but such legal proceedings may be had therefor in all respects as though no such order had been made.

This chapter applicable to. Comp. laws, 813.

SEC. 420. The provisions of this chapter apply to the bonds of receivers, executors, administrators and guardians.

Bonds of receivers, assignees, etc. Comp. laws, §13.

SEC. 421. All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the Territory of Idaho; and upon the order of this court where such action or proceeding is pending may be prosecuted for the benefit of any and all persons interested therein

Actions on official bonds. Comp. laws, §14.

SEC. 422. When an action is commenced in any court in this Territory for the benefit of the Territory, to enforce the penalty of or to recover money upon an official bond or obligation or any bond or obligation executed in favor of the Territory of Idaho, or of the people of this Territory, the attorney or other person prosecuting the action may file with the court in which the action is commenced an affidavit, stating either positively or on information and belief that such bond or obligation was executed by the defendant or one or more of the defendants (designating whom), and made payable to the people of this Territory, or to the Territory of Idaho, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the Territory; and thereupon the clerk receiving such affidavit must certify to the Recorder of the county in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending and the amount claimed in the complaint, with the date of the commencement of the suit.

Action on official bonds, effect of. Comp. laws, §14

SEC. 423. Upon receiving such certificate the county Recorder must indorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and any judgment recovered in such action is a lien upon all real estate situated in any county in which such certificate is so filed belonging to the defendant, or to one or more of such defendants, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the Clerk and Recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs.

Bonds of deputies. N. S.

SEC. 424. Every officer or body appointing a deputy, clerk, or subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof.

CHAPTER XX.

RESIGNATIONS, VACANCIES, AND THE MODE OF SUPPLYING THEM.

SECTION
430. Resignations, to whom made.
431. Vacancies, how they occur.
432. Notice of removal, by and to whom given.
433. Vacancies in Legislature, how filled.
434. Vacancies, how filled when not otherwise provided for.

SECTION
435. Vacancies occuring during session of the Legislature.
436. Power and duty of officers filling unexpired terms.

Resignations to whom made. 13 ses., 116.

SECTION 430. Resignations must be in writing and made as follows:

1. By all Territorial officers and members of the Legislative Assembly, and all officers appointed by the Governor,

with the consent of the Legislative Council, to the Governor.

2. By all county, district and precinct officers, except County Commissioners, to the Board of County Commissioners.

3. By County Commissioners, to the Clerk of the Board.

4. By all other appointed officers, to the body or officer that appointed them.

Vacancies, how they occur. 13 ses., 116.

SEC. 431. An office becomes vacant on the happening of either of the following events before the expiration of the term:

1. The death of the incumbent.
2. His insanity, found upon a commission of lunacy issued to determine the fact.
3. His resignation.
4. His removal from office.
5. His ceasing to be an inhabitant of the Territory, or if the office be local, of the district, county, city, or precinct for which he was chosen or appointed, or within which the duties of his office are required to be discharged.
6. His absence from the Territory without permission of the Legislature or Board of County Commissioners beyond the period allowed by law.
7. His ceasing to discharge the duties of his office for the period of three consecutive months, except when prevented by sickness, or when absent from the Territory by permission of the Legislature, or Board of County Commissioners.
8. His conviction of a felony, or of any offense involving a violation of his official duties.
9. His refusal or neglect to file his official oath or bond within the time prescribed.
10. The decision of a competent tribunal declaring void his election or appointment.

Notice of removal, by and to whom given. N. S.

SEC. 432. Whenever an officer is removed, declared insane or convicted of a felony or offense involving a violation of his official duty, or whenever his election or appointment is declared void, the body, Judge, or officer before whom the proceedings were had must give notice thereof to the officer empowered to fill the vacancy.

Vacancies in Legislatures.

SEC. 433. Whenever a vacancy occurs in either House of the Legislature the Governor must at once issue a writ of election to fill such vacancy, if during, or prior to a session.

Vacancies, how filled, when not otherwise provided for. 13 ses., 116.

SEC. 434. When any office becomes vacant, and no mode is provided by law for filling such vacancy, the Governor must fill such vacancy by granting a commissioner, to expire at the end of the next session of the Legislature or at the next election by the people.

Vacancies during recess of legislature. 13 ses., 116.

SEC. 435. Vacancies occuring in office during the recess of the Legislature, the appointment to which is vested in the Governor and Council, or in the Legislature; must be filled by appointment made by the Governor; but the person so appointed can only hold the office until the adjournment of the next session of the Legislature.

Officers filling unexpired terms, powers of, etc. 13 ses., 116.

SEC. 436. Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties, and obligations of the officer whose vacancy he fills.

CHAPTER XXI.

PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS AND PAPERS BY OFFICERS TO THEIR SUCCESSORS.

SECTION.
440. Possession of books and papers.
441. Proceedings to compel delivery of.
SECTION
442. Attachment and warrant to enforce.

Possession of books and papers. Comp. laws, 576.

SECTION 440. Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent by virtue of his office.

Proceedings to compel delivery of. N. S.

SEC. 441. If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incumbent any such books or papers, such actual incumbent may apply by petition to any court of record sitting in the county where the person so refusing or neglecting resides, or to any Judge of the District or Probate Court residing therein, and the court or officer applied to must proceed in a summary way, after notice to the adverse party, to hear the allegations and proof of the parties, and so order any such books or papers to be delivered to the petitioner.

Attachment and warrant to enforce. N. S.

SEC. 442. The execution of the order and the delivery of the books and papers may be enforced by attachment as for a witness, and also, at the request of the petitioner, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers, and to take and deliver them to the petitioner.

CHAPTER XXII.

MISCELLANEOUS PROVISIONS.

SECTION.
448. Seals of executive officer.
449. Great seal.
450. Executive and judicial officers may administer oaths.
SECTION
451. Salaries of officers.
452. Office hours.
453. Signature of officers acting ex-officio.
454. Records open to public inspection.

Seals of executive officers. N. S.

SECTION 448. Except when otherwise specially provided by law, the seals of office of the various executive officers are those in use by such officers at the time this title takes effect, and each of such officers must at once file a description and impression of such seal in the office of the Secretary of the Territory.

Great seal. N. S.

SEC. 449. The Great Seal of the Territory is the one in use at the time of the adoption of this title.

Oaths, who may administer.

SEC. 450. Every executive and judicial officer may administer and certify oaths.

Salaries of officers. Comp laws, 851-801. 13 ses., 32.

SEC. 451. Unless otherwise provided by law, the salaries of officers must be paid out of the Territorial Treasury, quarterly, on the last day of each quarter.

Office hours N. S.

SEC. 452. Unless otherwise provided by law, every officer must keep his office open for the transaction of business from ten o'clock a. m., until four o'clock p. m., each day, except upon holidays.

Officers acting ex officio, signatures of N. S

SEC. 453. When an officer discharges ex-officio the duties of another office than that to which he is elected or appointed, his official signature and attestation must be in the name of the office the duties of which he discharges

Records open to public inspection.

SEC. 454. The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any citizen of this Territory.

TITLE II.

OF ELECTIONS.

CHAPTER I.

TIME OF HOLDING ELECTIONS.

SECTION
465. General Election, When to be Held.
466. Officers to be Elected.
SECTION
467. Special Elections, When to be Held.

General elections, when held.
13 ses., 107.

SECTION 465. There must be held throughout the Territory, on the first Tuesday after the first Monday of November, in the year eighteen hundred and eighty-eight, and in every second year thereafter, an election, to be known as the general election.

Officers to be elected.
13 ses., 107.

SEC. 466. At such election the following officers must be elected:

One Delegate to Congress for the entire Territory;

Members of the Legislative Council and House of Representatives, according to the number apportioned by law to the county, or to counties jointly; one Probate Judge; one Treasurer, who is ex officio Public Administrator; one Sheriff; one District Attorney; one Recorder, who is ex officio Auditor, and ex officio Clerk of the Board of County Commissioners; one Assessor, who is ex officio Tax Collector; one Surveyor; one School Superintendent, and one Coroner for each county; and one County Commissioner for each of the three districts of each county; two Justices of the Peace and one Constable for each precinct of each county.

Special elections, when held.

SEC. 467. Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper board or officer.

CHAPTER II.

ELECTION PROCLAMATIONS.

SECTION
475. Election Proclamations by the Governor.
476. Proclamation, What to Contain.
477. Notice of election.
478. Notice must be Posted.
479. Election Proclamations by Commissioners.
SECTION
480. Governor's Proclamation, Time of Publication.
481. Election Proclamation, Printing of.
482. Payment for.
483. Same.

Election proclamations by the Governor.
N. S.

SECTION 475. At least thirty days before each general election, and whenever he orders a special election, the Governor must issue an election proclamation, under his hand and the great seal of the Territory, and transmit copies thereof to the Board of Commissioners of the counties in which such elections are to be held.

Proclamations, what to contain.

SEC. 476. Such proclamation must contain:

A statement of the time of election, and of the offices to be filled.

Notice of election.
13 ses , 108.

SEC. 477. The Clerk of the several Boards of County Commissioners must, at least ten days before any general election, make out and deliver to the Sheriff of his county, or to a Justice of the Peace of any county attached for judicial purposes, three written notices thereof for each election precinct, the said notices to be, as nearly as circumstances will admit, as follows:

Notice is hereby given, that on the Tuesday following the first Monday of November next, at the house of————, in the county of——————, an election will be held for Territorial, County, District and Precinct officers (naming the offices to be filled as the case may be), which election will be open at eight o'clock in the morning and will continue until seven o'clock in the evening of the same day.

Dated this———day of—————, A. D. 18—, (as the case may be).

[Signed] Clerk of the Board of County Commissioners.

Notice must be posted.

SEC. 478. The sheriff aforesaid, to whom such notices are delivered as aforesaid, must cause to be put up, in three of the most public places of each election precinct, the notices referring to such elections precinct at least six days previous to the time of holding any general election; said notices shall be posted as follows: One at the house where the election is authorized to be held, and the others at two of the most public and suitable places in the precinct.

Proclamations by commissioners. 13 ses., 108.

SEC. 479. Whenever a special election is ordered by the Board of Commissioners, notice must be issued and posted in the same manner as for a general election.

Governor's proclamations, time of publication. 9 ses., 41.

SEC. 480. The Governor's proclamation for a general election must be published four successive weeks before the day of election.

Election proclamation, printing of. Comp. laws, 740.

SEC. 481. The Secretary of the Territory is authorized and empowered to select four newspapers, published in the Territory, to print the Governor's election proclamation.

Payment for. Comp. laws, 740.

SEC. 482. The sum of twenty-five dollars to be equally divided between the said four newspapers is hereby appropriated biennially out of any money in the treasury, to pay for the printing of such proclamation.

Same. Comp. laws, 740.

SEC. 483. The Controller is required to draw his warrant on the territorial treasurer for the sum of twenty-five dollars, biennially, in favor of the Secretary of the Territory, as full compensation for the printing of said election proclamation.

CHAPTER III.

MISCELLANEOUS PROVISIONS.

SECTION		SECTION	
490.	Plurality to elect.	492.	Electors privileged from arrest, when.
491.	Proceedings on a tie vote.	493.	Compensation of officers of election.

Plurality to elect. 13 ses., 115.

SECTION 490. The person receiving at any election the highest number of votes for any office to be filled at such election is elected thereto.

Proceedings on tie vote.

SEC. 491. If at any election, two or more persons receive an equal and the highest number of votes, there is no choice, and a special election to fill such office must be ordered by the proper Board or officer.

Electors privileged from arrest.

SEC. 492. Electors are privileged from arrest, except for an indictable offense, during their attendance on the election, and in going to and returing from the same.

Compensation of officers of election. 13 ses., 115.

SEC. 493. The compensation of Judges of Election and Clerks is four dollars per day, and must be audited by the

Board of Commissioners, and paid out of the County Treasury.

CHAPTER IV.

QUALIFICATIONS AND DISABILITIES OF ELECTORS.

SECTION
500. Qualification of voters.
501. Certain citizens not entitled to vote.
502. Registration appointment of Registrar.
503. Notice of time, and place of Registration, Registry Books.
504. Oath of Registrar, Notice Examination of applicants, Oath of Elector, Check lists.
505. Registration on Election day, Challenges, Records transmitted.

SECTION
506. Transfer certificate voting in other Precinct.
507. Act when appicable.
508. General registration, Subsequent registration, Striking off names, Application to District Court.
509. Compensation of Registrar.
509*a*. Oath against corruption.
509*b*. Penalties, Sale of votes.

Qualification of a voter. 13 ses., 106. 14 ses., act Feb, 8, 1887.

SECTION 500. All male inhabitants over the age of twenty-one years, who are citizens of the United States, and have resided in the Territory four months, and in the county where they offer to vote thirty days, next preceding the day of election, "if registered as in this Code provided," are entitled to vote at any election for Delegate to Congress, and for Territorial, County, and Precinct officers, except as provided in the next section.

Certain citizens not entitled to vote. 13 ses., 107.

SEC. 501. No person under guardianship, *non compos mentis,* or insane, nor any person convicted of treason, felony, or bribery, in the Territory, or in any other State or Territory in the Union, unless restored to civil rights, nor any person who is a bigamist or polygamist, or who teaches, advises, counsels or encourages any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization, association which teaches, advises, counsels, or encourages its members or devotees, or any other persons, to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization or association, or otherwise, is permitted to vote at any election, or to hold any position or office of honor, trust, or profit, within this Territory.

Registrar, appointment of.

SEC. 502. The board of County Commissioners of each county of this Territory, must, prior to the 1st day of August, 1888, appoint a registrar for each election precinct in the county, who must be a Justice of the Peace and qualified elector, resident of such precinct, and otherwise a proper person, and qualified to perform the duties of such office, and when there is no such Justice of the Peace, or none who will act, then any other qualified voter resident therein, and such Registrar may hold his office until his successor is appointed and qualified. When any Registrar fails to act, or the office becomes vacant, the said Board must appoint another Registrar, and should the board fail to appoint a Registrar, or from any cause none should act, the electors may, on the last Saturday of September, at one (1) o'clock p. m., next preceding any general election, to which this chapter is applicable, meet at the place in the precinct, appointed by said board for the holding of such elections, and elect a Registrar.

Vacancies.

Notice of time and place of registration.

SEC. 503. The said Board must, at least three months prior to any general election, cause notice to be given, for not less than fifteen (15) nor more than thirty (30) days, by publication in some newspaper published in the county, if there be one, otherwise by at least three (3) notices, posted up in different parts of the county, one (1) of which must be at the Court House door, of the names and general description of election precincts the name of the Registrar for each, and the time during which registration may be made.

Time of registration.

The time during which registration is made is as follows: For the general election in the year eighteen hundred and eighty-eight (1888), during ever Saturday between the fifteenth (15th) day of August and the day of election, except the Saturday immediately preceding the election; for every succeeding general election, to which the provisions of this act are applicable, during the five (5) Saturdays next preceding such election, except the last Saturday thereof, and when necessary in any precinct, for any election, said Board may appoint additional days, and give such notice thereof, as the Board deem necessary.

Registry books.

At the time of, or before giving, such notice, the Board must furnish to each Registrar two (2) books, one (1) to be known as the "Election Register" for the registry of qualified electors, and the other for the registry of rejected applicants.

Each of said books must be ruled and headed substantially as follows:

Number.	Name of Elector.	Dates of Registry or Dates of Rejection.	Age.	Where Born.	Description of Residence.	Certificate of Naturalization Exhibit? Yes or No.	Remarks.

Blanks.

Said Board must also furnish to the Registrar the blank notices, certificates, oaths, and all other blanks, books and papers needed to perform the duties of his office.

Oath of registrar.

SEC. 504. Before entering upon the duties of his office, each Registrar must take and subscribe, before any officer authorized to administer oaths, the "official oath" required of all officers acting under the laws of this Territory, which, when so taken and subscribed, must be by him filed with the Clerk of the Board of County Commissioners, and said Registrar may thereupon register his own name in the Elector's Register.

Notice of registrar.

He must also, prior to the time of commencement of registration, post notices in at least three (3) public places, in different parts of his precinct, as will be most likely to give notice to the inhabitants thereof, giving the time, days, and hours during, and place at which, he will be ready to receive and hear applications for registration, and he must thereafter, on the days named by him, be at the place of registration designated, from the hours of 9 o'clock a. m., to 5 o'clock p. m., and from 7 o'clock p. m. to 9 o'clock p. m., and receive and register the names of all persons applying, who are, or will be on the day of the election, for which said

Office hours.

registration is made, entitled to vote thereat. He must also, on any other day of the week, except holidays, during said time of registration, register any such elector, who may find and apply to him at his place of registration, and he may at any time or place, during said time of registration, register any such elector of his precinct.

Registration at all times.

Examination of applicants.

First. He may at any time examine under oath, any applicant as to his qualifications, and he must likewise examine, also permit any qualified elector of his county to examine any applicant for registration, either when such applicant is not known to the Registrar to be a qualified elector challenges such applicant, and distinctly states his cause of challenge.

Proof of citizenship.

Second. When any applicant claims to be a naturalized citizen, the production by him of his Certificate of Naturalization, is prima facie evidence of his citizenship; if he cannot produce such certificate, he must state under oath, positively, the time when, and place and court where, he was naturalized; also, he must by his own, or other, testimony make it satisfactorily appear to such Registrar that he has been duly naturalized, but that his certificate thereof is lost, destroyed, or beyond his control, and thereupon he must be deemed a citizen and entitled to registration, if otherwise qualified, all examinations before such Registrar, must be reduced to writing, when desired by the applicant, challenging elector, or the Registrar, but such examination for any one (1) applicant shall not exceed one-half ($\frac{1}{2}$) hour, without the consent of the Registrar.

Refusal of applicant.

If any applicant refuses to answer all questions, give all information under his control, take all oaths, and do all other acts and things required of him by law, his application must be rejected by the Registrar.

The Registrar must, before he registers any applicant, require him to take and subscribe the oath, to be known as the "Elector Oath," which is as follows:

Oath of elector.

I do swear (or affirm) that I am a male citizen of the United States of the age of twenty-one (21) years, (or will be the——day———18——(naming date of next succeeding election) that I have (or will have) actually resided in this Territory for four (4) months, and in this county for thirty (30) days next preceding the day of the next ensuing election; (in case of any election requiring a different time of residence, so make it) that I have never been convicted of treason, felony or bribery; that I am not now registered, or entitled to vote, at any other place in this Territory; and I do further swear that I am not a bigamist or polygamist; that I am not a member of any order, organization, or association which teaches, advises, counsels or encourages its members, devotees, or any other person to commit the crime of bigamy or polygamy, or any other crime defined by law, as a duty arising or resulting from membership in such order, organization or association, or which practices bigamy or polygamy, or plural or celestial marriage, as a doctrinal rite of such organization; that I do not, and will not, publicly or privately, or in any manner whatever, teach, advise, Counsel, or encourage, any person to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a religious duty or otherwise; that I do regard the constitution of the United States, and the laws thereof, and of this Territory, as interpreted by the courts, as the supreme law of the land, the teachings of any order, organization or association to the contrary notwithstanding; when made before a Judge of Election, add "and I have not previously voted at this election") so help me God.

Subscribed and sworn to before me this——day of——18—.
——— Register of——Precinct
——— County, Idaho Ty.

If the name of the applicant for registration be by him signed to said oath, and the jurat thereof be dated and signed by any officer authorized to administer oath such applicant shall not be permitted to deny that he took and swore to said oath, but if the applicant sign said oath by his mark, his signature must be witnessed by one (1) witness, and in all cases where the applicant says he does not know the contents of said oath, he must be asked to read the same or it must be read to him, before he swears thereto.

Entry in register.

Third. When the Registrar admits anyone to registration, he must enter in the proper column of the "Electors Register" the number, name in full, (except any middle same, which may be by initial), date of registry, age, place of nativity and residence of the elector so admitted; the residence must be so described, by giving the house, street, ward, or part of the precinct he resides in, that it may easily be found, also it shall be stated, if a naturalized citizen, whether or not he produced his certificate, and the Registrar may, in the column of remarks, add any pertinent notes.

Persons refused registration.

He must also enter the names, with statements similar to the above, of all persons who are refused registration, in the book kept for that purpose, and therein state the reasons of such refusal.

Check lists.

Delivery to judges.

Voters checked.

Fourth. During the time between the last day of registration and the day of election, each Registrar must prepare from his "Elector's Register," two (2) "check lists" of all the names registered by him, arranged alphabetically, according to the surname, placing on the left of the name the same number it bears in the "Elector's Register," and on the right of the column of names, a blank column, in which to indicate, by the word "voted," when the elector votes, and between the names, under each letter, must be left a sufficient number of blank lines, in which to place the names of any unregistered electors, who may be allowed, on the day of election, to register and vote as hereinafter provided; said "check lists" must have a heading, showing for and at what election it was prepared and used; they must be carefully prepared, without interlineations, in legible writing, certified and sworn to by the Registrar, and not later than the day next preceding the election, he must deliver to one of the Judges of election of his precinct, his "Electors Register," and the register containing the names of those refused registration, and to the other two (2) Judges, who are not of the same political party, a copy each of said "check lists;" and such judges must, as the electors vote, write the word "voted" opposite their names in said "check lists," while the clerks of election keep the record of electors voting, as elsewhere provided in the election law.

Registration on election day.

SEC. 505. When on the day of election, any person who has not been refused registration by the Registrar and, is not registered, applies to the Judges of election to be registered and allowed to vote, and has already, before some officer qualified to admininister oaths, subscribed and sworn to the "Elector Oath," the Judges of election, if satisfied he is a qualified elector of the precinct, must register him in the "Electors Register," also must register his name, according to his surname, in the proper place in said "check lists," and allow him to vote, but he shall be subject to challenge and examination the same as before the Registrar.

Either of the Judges may administer such oath to such unregistered applicant, but in all cases where there is a registered elector at the polls offering to vote, he must have the preference, and it is only when the Judges are not engaged receiving the ballots of the registered electors, that they must or may give attention to unregistered electors.

Challenges.

All persons offering to vote at any election, whether registered or not, are subject to challenge, as provided by the election laws, but registration of an elector's name is prima facie evidence of his right to vote, and no person shall vote, unless he is first registered, either by the Registrar or by the Judges on the day of election.

Records transmitted.

Each Registrar after so preparing his "check lists," must arrange the "Elector Oaths," taken before him, in the order the names of the electors, who took them, appear upon the "check lists," and attach them together, putting the names under each letter in a separate package, and all such oaths, certificates and written testimony taken by the Registrar, as well as the like papers taken before, or filed with the Judges of election, and the register-books of electors and persons rejected, delivered to said Judges, must all be transmitted, as other election returns, to the Clerk of the Board of County Commissioners, who must preserve the same for at least three (3) years, and until said Board otherwise order.

Transfer certificate.

SEC. 506. When a registered elector desires to remove from the precinct where he is registered, he may at any time before the Registrar has delivered the "check lists" to the Judges of the election, apply to such Registrar for a certificate of his registration, who must thereupon grant the same, stating therein the facts concerning such elector as they are stated on the "Electors Register," and must then strike the name of such elector from the register, stating therein the reasons therefor.

Voting in other precinct.

Such elector may, any time before the "check lists" are furnished the Judges, present his certificate of Registration to the Registrar of any other precinct of the territory, and be registered therein, if otherwise entitled to vote in such precinct; or he may present such certificate on the day of election, to the Judges of election, in any precinct in the territory and be allowed to vote, if otherwise entitled, but on being so re-registered, or allowed to vote, he must surrender his certificate of registration, and he may, before being so admitted to re-registration, or to vote, be examined, challenged, or required to take the "Electors Oath," as in other cases.

Act when applicable.

SEC. 507. This act shall first be applied to the General Election held in the year eighteen hundred and eighty-eight (1888), and thereafter to all General Elections.

General registration.

SEC. 508. The only general registration to be made is that for the General Election in the year 1888, and for registration for any subsequent election, to which this act is applicable, the Clerk of the Board of County Commissioners must send to the Registrar of each precinct, in which such election is to be held, the "Elector's Register" used at the last preceding registration, or a copy thereof as, said Board may order, and such Registrar must then, during the time allowed for registration for such elections, correct such register, or copy thereof by striking therefrom the names of all persons who have by death, removal, or from other cause, ceased to be qualified electors, or who may have been before erroneously registered, and register such qualified electors, as are not registered, in the manner provided for original registration, and otherwise proceed as hereinbefore provided.

Subsequent registration

Striking off names.

When any Registrar shall strike from such register, the name of any person who resides in the precinct, he must give such person notice of his action, that he may again apply for registration, as any other applicant for registration.

Notice of.

Application district court

Should any Registrar at any time refuse to register any applicant, such applicant may apply to the District Court, or the Judge thereof, for a writ of mandate to compel the Registrar to register him, and the provisions of the Code of civil Procedure in similar proceedings, are applicable.

Compensation.

SEC. 509. The several Registrars shall receive such compensation as shall be allowed by the Board of County Commissioners, which in no case shall exceed twenty-five (25) cents for each name registered.

At any registration after the first ten (10) cents for each name that appeared on the last "Election Register," which is carried to the new "check lists" and the compensation herein provided for shall be paid out of the "Current Expense" or "County General" Fund.

SEC. 509*a*. When any person, offering to vote, has passed his ballot to the Judges, before the same is deposited in the ballot box, one of the Judges may, and upon the request of any elector present, must administer to and require such person to subscribe and swear to the oath as follows:

Oath of elector.

"I do swear (or affirm) that I have neither directly or indirectly been paid, agreed to accept, solicited, asked, nor am I to receive any money, property, reward, office, thing, promise, or consideration of any kind whatever, as a consideration, payment, or reward for the vote I am about to cast, but such vote is by me cast of my own choice, and upon my own judgment:

That I have not bet or wagered any money, or other thing of value upon the result of this election, so help me God.

____

Subscribed and sworn to before me this ——— day of ———————————18——

____

Judge of Election
—————Precinct."

If such person refuses to take and subscribe such oath, he must not be permitted to vote, and his ballot must be returned to him.

SEC. 509*b*. Any person is guilty of felony who votes or offers to vote at any election, in the name of some other registered elector, or other person, or any person who wilfully registers his name in one precinct, while registered in another, without attempting to procure his certificate of transfer, or any person who attempts to register or vote in any precinct when he knows he is not entitled thereto, or any person who aids, advises, or abets, any one in unlawfully registering his name, or in violating any of the provisions of this act: and any Registrar who corruptly registers any person whom he knows is not entitled thereto, or refuses to register any one complying with the provisions of this act, and whom he knows to be a qualified elector; also any officer connected with the administration of this law, who wilfully does any act in violation of the provisions hereof, or who by wilfully destroying, carrying away, or misplacing, any books or papers connected with registration, defeats an election or renders an election unfair, or deprives electors of their votes, and upon conviction thereof before any Court of competent jurisdiction, must be punished as provided for felony.

Penalty against elector.

Penaly against registrar.

Penalty against election officers.

Any person who directly or indirectly barters or sells his vote, or takes, receives, or agrees to take or receive, solicits or asks any money, property, reward, promise of reward, or favor of any kind whatever, as a consideration, payment or reward for his vote, is guilty of felony, and upon conviction thereof, must be punished as provided for felony, and forever debarred from thereafter holding any office, or voting under the laws of this Territory:

Corruption of elector.

Provided, nothing in this act shall apply to any elections in this Territory, except General Elections.

Act Feb. 8th, 1887, in effect June 1st, 1887.

CHAPTER V.

ELECTION PRECINCTS.

SECTION.
510. Commissioners to establish election precincts.
511. Board may alter, etc., precincts.
SECTION
512. Board to designate place in precinct for holding election.

SECTION 510. The board of Commissioners of each county must establish a convenient number of election precincts therein.

Commissioners to establish precincts.
13 ses., 107.

SEC. 511. The Board may, from time to time, change the boundaries of, create new, or consolidate established precincts; but they must not alter or change any election precinct, or change the place of holding election in any precinct, after their regular July meeting next preceding any election.

Board may, etc., precincts.
13 ses., 107.

SEC. 512. The Board must, in its order appointing Judges of Election, designate the house or place within the precinct where the election must be held.

Board must designate place of holding election.
13 ses., 108.

CHAPTER VI.

JUDGES OF ELECTION.

SECTION
520. Judges of Election, how appointed.
521. Judges not to be of same political party.
SECTION
522. Judges and Clerks may administer oaths.
523. Clerks.
524. Judges and Clerks to be sworn.

Judges of election, how appointed.
13 ses., 107.

SECTION 520. It is the duty of the County Commissioners at their regular session in July, preceding a general election, to appoint three capable and discreet persons possessing the qualifications of electors, to act as Judges of Election, at each election precinct; and the Clerk of the Board must make out and deliver to the Sheriff of the county, immediately after the appointment of such Judges a notice thereof in writing directed to the Judges so appointed; and the Sheriff within ten days of the receipt of said notice, must serve the same upon each of the said Judges of election by registered mail. If in any precinct any of said Judges do not serve, the voters of said precinct may elect a Judge or Judges to fill the vacancy on the morning of the election, to serve at such election.

Judges not of same party.
N. S.

SEC. 521. All Judges appointed must not be members of the same political party, in any precinct.

Oaths, who may administer.

SEC. 522. Either Judge may administer and certify oaths required to be administered during the progress of an election.

Clerks.
13 ses , 108.

SEC. 523. The Judges must choose two persons having similar qualifications with themselves, to act as clerks of the election. The said Judges shall be and continue Judges of all elections of civil officers, to be held in their respective precincts, until other Judges are appointed; and the said clerks of election may continue to act as such during the pleasure of the Judges of Election; and the County Commissioners must, from time to time, fill all vacancies which may occur in the office of Judges of Election, at any election precinct within their respective counties.

Judges and clerks to be sworn.
13 ses , 108.

SEC. 524. Before opening the polls, each Judge and each Clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the township may administer and certify such oath.

CHAPTER VII.

OPENING AND CLOSING THE POLLS.

SECTION
530. Time of opening and closing the polls
531. Ballot-box.
SECTION
532. Ballot-box to be exhibited.

Time of opening and closing the polls.
13 ses., 109.

SECTION 530. At all elections to be held under this title, the polls must be opened at the hour of eight o'clock in the forenoon, if the regularly appointed Judges of election are present; but in case they are not present, then the polls must not be opened by Judges elected, until the hour of nine o'clock unless a majority of the regularly appointed Judges are present; and the polls must continue open until seven o'clock in the evening of the same day, at which time the polls must be closed; and upon opening the polls, one of the Clerks, under the direction of the Judges, must make proclamation of the same; and thirty minutes before closing the polls, proclamation must be made in like manner, and the polls closed in half an hour thereafter.

Ballot box. 13 ses., 111.

SEC. 531. The Judges of each election precinct must provide, at the expense of the County, a suitable ballot-box, with a lock and key and an opening in the lid sufficient to admit a single folded ballot, and no larger. The key must be delivered to one of the Judges designated by the Board.

Ballot box to be exhibited. 13 ses., 111.

SEC. 532. Before receiving any ballots the Judge must, in the presence of any persons assembled at the polling place, open and exhibit, close and lock the ballot box; and thereafter it must not be removed from the polling place or presence of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed.

CHAPTER VIII.

POLL LISTS.

SECTION
540. Form of poll lists.

SECTION
541. Want of form not to vitiate.

Form of poll lists. N. S.

SECTION 540. The following is the form of poll lists to be kept by Judges and Clerks of Election:

POLL LISTS.

Of the election held in the precinct of ———— in the County of ———— on the ———— day of ———— in the year A. D. one thousand eight hundred and———— ———— A. B., C. D. and E. F., Judges, and G. H. and J. K., Clerks, of said election, were respectively sworn (or affirmed) as the law directs, previous to their entering on the duties of their respective offices.

NUMBER AND NAMES OF ELECTORS VOTING.

No.	Name.	No.	Name.
1. 2.	A. B. C. D.	3. 4.	E. F. G. H.

We hereby certify that the number of electors voting at this election amounts to ————.

Attest:
G. H. } Clerks. A. B. }
J. K. } C. D. } Judges of Election.
E. F. }

Want of form not to vitiate. N. S.

SEC. 541. No list, tally, paper, or certificate returned from any election must be set aside or rejected for want of form, nor no account of its not being in accordance with the directions of this title, if it can be satisfactorily understood.

CHAPTER IX.

ELECTION TICKETS AND BALLOTS.

SECTION
545. Ballot defined.
546. Form of ballot.
547. Ballots to have no marks on outside.
548. Ballot to have no marks by which it can be told who voted it.
549. Tickets, how to be folded.
550. Tickets not to be folded so as to indicate their contents.
551. Tickets folded together must be rejected.
552. Ballots not to be rejected for obscurity in the name of person or office.
SECTION
553. When more persons are designated for an office than are to be chosen, ballot to that extent must be rejected.
554. Written and printed names for the same office, which to be rejected.
555. Printed tickets not to be erased but by lead pencil or ink.
556. Two votes on same ballot for same person must be counted as one.
557. Ballots not in compliance with law not to be received.

Ballot defined.
13 ses., 109.

SECTION 545. A ballot is a ticket folded in such a manner that nothing written or printed thereon can be seen.

Form of ballot.
13 ses., 109,
sec. 13.

SEC. 546. No ticket must be used at any election, or circulated on the day of election, unless:

1. It is written or printed on plain white paper:

2. It is four inches in width and twelve inches in length, or within one-fourth of an inch of such size:

3. If printed, the names of the persons voted for and the office designated are printed in black ink, and in long primer capitals—the name of the office in small capitals, and of the person in large capitals—and both without spaces, except between the different words or initials in each line:

4. If printed, the same margin is left above the printed matter as below it, and the side margins are equal in size:

5. If printed, the lines are straight, and the matter single leaded:

6. If written, the matter is so written that no sign thereof appears when the paper is folded: and

7. It is free from every mark, character, or device, or thing that would enable any person to distinguish it by the back, or when folded, from any other legal ticket or ballot.

Ballots to have no marks on outside.
N. S.

SEC. 547. No ballot must be used at any election, or circulated on the day of any election having any mark or thing on the back or outside thereof whereby it might be distinguished from any other ballot legally used on the same day.

Ballots must have no marks by which it can be told who voted it.
N. S.

SEC. 548. No ballot or ticket must be used or circulated on the day of any election, having any mark or thing thereon by or from which it can be ascertained what persons or what class of persons, or at what time in the day such ballot was voted or used.

Tickets folded, how.
13 ses., 109.

SEC. 549. Every ticket, when used as a ballot, must be folded crosswise (four times) from the center, so as to make the ballot three-fourths of one inch in size, and must be pressed flat.

Tickets, how not folded.
N. S.

SEC. 550. No ticket must be folded in a manner to indicate its contents when used as a ballot; but any elector, who is entitled to a vote for part and not all of the officers to be chosen, must vote an open ballot.

When two folded together to be rejected.
N. S.

SEC. 551. If in the ballot box two tickets are found folded together in the form of a ballot, they must both be rejected.

When ballot not to be rejected.
13 ses., 115.

SEC. 552. No ballot or part thereof must be rejected by reason of any obscurity therein in relation to the name of the person voted for or the designation of the office, if the

Board, from an inspection of the ballot, can determine the person voted for and the office intended.

Ballot rejected to what extent. N. S.

SEC. 553. If the names of more persons are designated on any ballot found in the ballot box for the same office, than are to be chosen for such office, then, except in the cases provided for in the next section, all the names designated for such offices must be rejected, and the fact of such rejection, and the reasons therefor, must at the time of such rejection be noted on the ballot and signed by a majority of the judges.

Written and printed names for same office, which to be rejected. 13 ses., 116.

SEC. 554. When upon a ballot found in any ballot box a printed name and a name written with ink or with pencil appears, and there are not so many persons to be chosen for the office, the printed name must be rejected and the written one counted, and the fact must at the time be noted on the back of the ballot, and such note must be signed by a majority of the judges.

Printed tickets, how erased. N. S.

SEC. 555. When upon a ballot found in any ballot box a name has been erased and another substitute therefor, in another manner than by the use of a lead pencil or common writing ink, the substituted name must be rejected and the name erased, if it can be ascertained from an inspection of the ballot, must be counted, and the fact thereof must be noted upon the ballot, and such note must be signed by a majority of the Judges.

SEC. 556. If a ballot is found in any ballot box containing the name of the person and the office for which he is designated, or either, two or more times, it must not for that reason be rejected; it must be counted as one ballot.

Ballots not to be received unless in compliance with law. 13 ses., 109.

SEC. 557. The Judges must refuse to receive or to allow to be deposited in the ballot box any ballot offered if it is apparent that it is in compliance with the provisions of this chapter.

CHAPTER X.

VOTING AND CHALLENGES.

SECTION
565. Voting, when to commence and continue.
566. Manner of voting.
567. Same.
568. Same.
569. Clerk to keep lists.
570. Who may challenge.
571. Oath of elector.
572. On ground of conviction of a felony.
573. If person refuse to be sworn, vote to be rejected.
574. Determination of questions of residence.
575. Proceedings upon determination of challenge.

Voting, when commence, etc.

SECTION 565. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain open.

Manner of voting. 13 ses., 109.

SEC. 566. The person offering to vote must hand his ballot to one of the Judges, and announce his name.

Same. 13 ses., 109.

SEC. 567. The Judge must receive the ballot, and before depositing it in the ballot box must, in an audible tone of voice, announce the name of the person voting.

Same. 13 ses., 109-10.

SEC. 568. If the vote is not rejected upon a challenge taken, the Judge must place the ballot, without being opened or examined, in the ballot box.

Clerks to keep poll lists. 13 ses., 100.

SEC. 569. Each Clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order of voting.

Challenge. 13 ses., 110.

SEC. 570. A person offering to vote may be orally challenged by any elector entitled to vote at the same poll, and either Judge must challenge any person offering to vote whom he knows or suspects not to be qualified.

Oath of elector. 13 ses. 110-111.

SEC. 571. One of the judges must declare the qualifications of an elector, to any person so challenged, if such person then declare himself duly qualified, and the challenge is not withdrawn, one of the Judges must then tender him the following oath:

"You do solemnly swear (or affirm) that you are a male citizen of the United States, over the age of twenty-one years; that you have actually resided in this Territory for four months last past, and in this county thirty days; that you are not a bigamist or polygamist; that you are not a member of any order, organization or association which teaches, advises, counsels or encourages its members, devotees or any other persons to commit the crime of bigamy or polygamy or any other crime defined by law, as a duty arising or resulting from membership in such order, organization or association, or which practices bigamy or polygamy or plural or celestial marriage, as a doctrinal rite of such organization. That you do not, either publicly or privately, or in any manner whatever, teach, advise, counsel, or encourage any person to commit the crime of bigamy or polygamy or any other crime defined by law either as a religious duty or otherwise. That you regard the Constitution of the United States, and the laws thereof, and of this Territory as interpreted by the Courts as the supreme law of the land, the teachings of any order, organization or association to the contrary notwithstanding, and that you have not voted previously at this election. So help you God."

If the person offering to vote be a naturalized citizen and does not produce his certificate of naturalization, the Judge of the election must propound the following interrogatories:

First. In what country were you born?

Second. How long have you resided in the United States?

Third. When and before whom did you declare your intention to become a citizen of the United States?

Fourth. When and in what Court were you finally admitted to citizenship?

Fifth. When did you last see your certificate of naturalization, and where is it now, if you know?

These interrogatories must be answered under oath, and if it appear that the person offering to vote has been duly naturalized in a competent court, and he possess all the other qualifications of a voter, his vote must be received, otherwise it must be rejected. *Provided*, That when a person is entitled to vote only for a part of the officers voted for at such election, the oath must be varied accordingly, and the Clerk must enter the names of all persons who are challenged on the poll lists, and the word sworn, in brackets, opposite, such name and such entry shall be presumptive evidence that such voter was sworn, and if any person refuses to take the oath so tendered, his vote must be rejected.

Conviction of felony. N. S.

SEC. 572. If the challenge is on the ground that the person challenged has been convicted of a felony and has not been pardoned, he must not be questioned; but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses and the non-production of a pardon.

Person refusing to be sworn, vote rejected. N. S.

SEC. 573. If any person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of naturalization, he must not be allowed to vote.

Questions of residence, determination of. N. S.

SEC. 574. A person must not be held to have gained or lost a residence by reason of his presence at or absence from a place while employed in the service of the United States, or of this Territory, nor while a student at any institution of learning, nor while kept in an almshouse, asylum, or prison.

Determination of challenge, proceedings. N. S.

SEC. 575. If the challenge is determined against the person offering the vote, the ballot offered must, without examination, be returned him; if determined in his favor, the ballot must be deposited in the ballot box.

CHAPTER XI.

CANVASSING AND RETURNING THE VOTE.

SECTION
585. Canvass to be public and without adjournment.
586. Canvass, how commenced. Ballots must be made to agree with names on list.
SECTION
587. Same.
588. Same. Counting the votes.
589. Certain papers to be sealed up.

Canvass to be public without adjournment. 13 ses., 111, Sec. 22.

SECTION 585. As soon as the polls are finally closed the Judges must immediately proceed to canvass the votes given at such election.

The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof declared.

Canvass, how commenced. Ballot must agree with names on list. 13 ses., 112.

SEC. 586. The canvass must commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they are found to agree. The box must then be opened and the ballots found therein counted by the Judges, unopened, except to ascertain whether each ballot is single; and if two or more ballots be found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed; and if, on a comparison of the count with the poll lists, and the appearance of such ballots, a majority of the Judges are of the opinion that the ballots thus folded together were voted by one elector, they must be rejected.

Same. 13 ses., 112.

SEC. 587. If the ballots in the box are found to exceed the whole number of votes on the poll lists, they must be replaced in the box (after being purged as above stated) and thoroughly mingled, and one of the Judges, after being blindfolded, must publicly draw out and destroy therefrom so many ballots unopened as are equal to such excess.

Counting the votes. 13 ses., 112.

SEC. 588. The ballots and poll lists agreeing, or being made to agree, the Board must then proceed to count and ascertain the number of votes cast, and the Clerks must set down in their poll books the name of every person voted for, and then at full length the office for which such person received such votes, and the number he did receive, the number being expressed at full length; such entry to be made as nearly as circumstances will permit, in the following form, to-wit:

At an election held at the house of (A. B.) in the town (district or precinct) of ——, in the County of ——, and in the Territory of Idaho, on the —— day of ——, A. D. —— the following named persons received the number of votes annexed to their respective names for the following decribed offices, to wit: (A. B.) had —— votes for Delegate to Congress; (I. J.) had —— votes for Member of Legislative Council; (K. L.) had —— votes for Member of House of Representatives, (and in like manner for any other person voted for.) Certified by us,

(M. N.)
(O. P.) } Judges of Election.
(Q. R.)

ATTEST:

(S. T.)
(U. V.) } Clerks of Election.

Certain papers to be sealed up. 13 ses., 112.

SEC. 589. The Judges of election must then enclose and seal one of the poll books under cover, directed to the Clerk of the Board of County Commissioners of the county in which such election was held. And the package thus sealed must be deposited in the nearest post office by one of said Judges, to be chosen by lot. And the postage thereon and the fees for registering the same must be fully prepaid. And said package must be duly registered and receipt therefor taken. And the other poll book and poll list together with the ballots must be by said Judges, placed in the ballot box, and by them sealed up, and then deposited with one of said Judges, to be decided by lot, if they can not otherwise agree. And the said poll books and ballots must be kept with the seal unbroken, for at least eight months unless the same is required as evidence in a Court of law in any case arising under the election laws of this Territory; and then only when the Judge having said ballot box in charge is served with subpœna requiring him to produce the same in Court as evidence in any such before mentioned case, when the same may be opened under the direction of said Court.

CHAPTER XII.

CANVASS OF RETURNS—DECLARATION OF RESULT—COMMISSIONS AND CERTIFICATES OF ELECTION.

SECTION
600. Meeting of Commissioners to canvass returns; Canvass, how made.
601. Declaration of result.
602. District returns, how made up; how transmitted; Duty of Clerk receiving district returns.

SECTION
603. Returns, how made and transmitted. Canvass of vote for Delegate.
604. Duty of Secretary of Territory to send a messenger when returns are not received.
605. Defects in form of returns, when to be disregarded.

Meeting of commissioners to canvass returns, canvas how made 13 ses., 113.

SECTION 600. The Board of Commissioners in the several counties must act as a Board of Canvassers of Elections, and must on the tenth day after any general or special election (provided that five days additional be allowed in Shoshone county), or sooner, if all the returns be received and all the Commissioners are present, proceed publicly at their office, to open the returns and canvass the votes of said election, and make up abstracts thereof, and it is their duty to canvass and make up abstracts of all returns that are intelligible on their face and which are sufficiently authenticated to show what returns they are, and if any returns are rejected on account of informality, ambiguity or uncertainty—and none must be rejected for other causes—then it is the duty of the Board to deliver the returns so rejected to the Sheriff of the county, who must proceed, at once, to summons and call together the Board of Judges of election of the precinct from which said return was received, and inform them that such return has been rejected, and it is the duty of such Board of Judges to meet publicly, at the place where the election was held in their precinct, immediately after receiving such notice and at once proceed to put said return in due form, and certify to the same and for the purpose of so doing they may have the ballot-box brought in, and opened in their presence, the contents thereof inspected, and when said returns have been duly corrected they must be delivered into the hands of the Sheriff sealed; and the Board of Canvassers may adjourn to await the correction of said returns, for a period of not more than five days at one time, nor more than ten days in all. When said canvass is completed, the abstract must be made up and signed by the Board. The abstract of votes for Delegate to Congress must be on one sheet, and the abstract of votes for members of the Territorial Council and Assembly shall be on one sheet, and the abstract of votes for county, district and precinct officers must be on one sheet. The Board must declare the result of the election, and cause a certificate of election to be given by their Clerk to any person or persons elected to a county, district, or precinct office within their county, and certify to each of said abstracts as herein provided. When a tie exists between two or more persons for the Council or House of Representatives, or for any county, district or precinct office, the Clerk of the Board must give notice to the Sheriff of the county who must immediately advertise another election, giving at least ten days notice. It is the duty of the Clerk of the Board of Commissioners of each county on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the Judges and Clerks of the election are entitled for their services, and lay the same before the County Commissioners at their next session, and the Board of Commissioners must order the compensation paid out of the County Treasury.

Declaration of result. 13 ses., 115.

SEC. 601. The Board must declare elected the person having the highest number of votes given for of each office to be filled by the votes of a single county or subdivision thereof.

Returns, how made up, how transmitted. Duty of clerk receiving same. 13 ses., 115.

SEC. 602. When two or more counties are united for the election of members of the Council or House of Representatives, or for the election of any office, the Clerks of the Boards of County Commissioners of the respective counties so joined, must, at the time of canvassing the votes of an election, proceed to canvass the votes of Joint Councilman or Representative, or both, or any other officer; and must immediately thereafter transmit each to the other Counties so joined, a certified abstract of all the votes cast in his county for such Councilman and Representative or other person; and the person having the highest number of votes for the respective offices must be declared duly elected, and must receive a certificate of election from the Recorder of the County first organized. In case either of the Counties so joined have not a Board of County Commissioners, the Judges of election must, immediately after they have canvassed the votes, as in this chapter provided, seal up one set of the poll books, retaining the boxes with the ballots, as herein provided, and immediately transmit such poll books to the Clerk of the Board of County Commissioners of the County to which they are attached having the oldest organization, who must immediately proceed to canvass the votes as in other cases of election in his own County, and issue certificate of election to the person found to be entitled thereto. The returns mentioned in this section may be sent by mail, express, or by some safe, private conveyance, being securely sealed up, addressed to the Clerk of the Board of County Commissioners, and endorsed on the back, Election Returns of ——— county.

Returns, how made and transmitted; canvass of vote for Delegate. 13 ses., 114

SEC. 603. The Clerk of the Board of County Commissioners, immediately after making out the abstract of the votes given in his county, must make out a copy of each of said abstracts of votes for Delegate to Congress and members of the Legislature and transmit it by mail, express or special messenger, to the Secretary of the Territory, at the seat of Government; and it is the duty of the Secretary of the Territory, with the Marshal of the Territory, or his deputy, in the presence of the Governor, to proceed within thirty days after the election, and sooner, if the returns be all received, to canvass the vote given for Delegate to Congress, and the Governor must grant a certificate of election to the person having the highest number of votes, and must also issue a proclamation declaring the election of such person. In case there is no choice, by reason of any two or more persons having an equal and the highest number of votes, the Governor must, by proclamation, order a new election.

Duty of secretary to send messenger when returns not all received. 13 ses., 114.

SEC. 604. If the returns of the election of any county in this Territory are not received at the office of the Secretary of the Territory within twenty days after the election, the said Secretary may forthwith send a messenger to the Clerk of the Board of County Commissioners, whose duty it is to furnish the said messenger with a copy of such returns and the said messenger must be paid out of the county Treasury of said county, the sum of thirty cents for each mile he necessarily travels in going to and returning from the said county.

Defects in form of returns, when to be disregarded.

SEC. 605. No declaration of the result, commission, or certificate must be withheld on account of any defect or informality in the return of any election, if it can with reasonable certainty be ascertained from such return what office is intended, and who is elected thereto.

TITLE III.

PUBLIC SCHOOLS.

CHAPTER I.

GENERAL SCHOOL FUNDS.

SECTION.
620. What moneys constitute School Fund.
621. School Fund Tax.
622. How assessed.
SECTION
623. No fees allowed for collecting.
624. A separate fund.
625. Fines set apart for.

What moneys constitute school fund. 13 ses.. 180.

SECTION 620. All moneys accruing from the sale of lands given, or that may be given, by the Congress of the United States for school purposes in said Territory, and all moneys that may be given and appropriated by the Congress for school purposes, unless the same by special provision, be appropriated for the establishment of a university or other high school, together with any moneys, by legacy or otherwise donated for educational purposes and appropriated for the general fund, and all moneys accruing to the Territory from the estates of deceased persons, are set apart and constitute an irreducible and indivisible Territorial General School Fund, the interest only accruing from which may be appropriated to the respective counties of the Territory in the manner hereinafter provided.

School fund tax.

SEC. 621. For the purpose of establishing and maintaining public schools in the several counties of the Territory, it is the duty of the county commissioners of each county, at the time of levying the taxes for county and Territorial purposes, to levy a tax of not less than four mills, nor more than ten mills, on each dollar of taxable property in their respective counties for school purposes.

How assessed.

SEC. 622. Said taxes must be assessed and collected in each county as other taxes on property for county and Territorial purposes.

No fees allowed for collecting.

SEC. 623. The Tax Collectors, Treasurers, and other officers of the respective counties must not receive any fees or percentage for collecting, holding and disbursing the moneys so received from said taxes, and set apart for public school purposes, but they must perform all such duties without fee or reward.

School fund a separate fund.

SEC. 624. The moneys so collected are hereby set apart and appropriated for the support of the public schools of the respective counties, and must be paid by said Collectors or other officers receiving such moneys, to the County Treasurers of the respective counties, and by said Treasurers must be placed in a separate account, to be called the County School Fund, and must only be drawn from each county treasury in the manner hereinafter provided.

Fines set apart for

SEC. 625. For the further support of the public schools there must be set apart by the County Treasurer of each county, and placed in the County school fund as a part of the same, all moneys arising from fines and forfeitures for a breach of any of the penal laws of this Territory.

CHAPTER II.

TERRITORIAL SUPERINTENDENT.

SECTION
630. Territorial Superintendent of Public Instruction.
631. Superintendent Public Instruction, duties of.
SECTION
632. Effect of act.
633. Repealing clause.

Territorial Superintendent Public Instruction

SEC. 630. A Territorial Superintendent of Public Instruction shall be appointed by the Governor, by and with the advice and consent of the Legislative Council, and shall enter upon the duties of his office on or before the thirtieth day after his appointment and confirmation, and shall hold office for the term of two years and until his successor is appointed and qualified, and shall execute a bond in the penal sum of one thousand dollars to be approved by the Governor of the Territory, conditioned upon the faithful discharge of his official duties. Said Superintendent shall receive for such duties the sum of twelve hundred dollars per annum, to be paid quarterly in the same manner as other salaries of Territorial officers are paid.

Term of office.

Bond.

Duties of.

SEC. 631. It is the duty of the Superintendent of Public Instruction:

First. To superintend the public schools in the Territory:

Second. To report to the Governor on or before the first day of December preceding each regular session of the Legislature the condition of the public schools:

Third. To accompany his report with tabular statements, showing the number of school children in the Territory, the number attending public schools and the average attendance; the amount raised by county and district taxes, or from other sources of revenue for school purposes, and the amount expended in accordance with the provisions of this Title:

Fourth. To present such suggestions as he may deem necessary in relation to the construction of school houses, the improvement and management of the public schools, to the qualification of teachers, the ways and means for raising funds for the support of public schools, and for the promotion of the general interest of education throughout the Territory:

Fifth. To prepare and have blanks printed for reports, contracts, notices and certificates of all school officers and teachers, and copies of the General School Laws of this Territory in pamphlet form, which he shall distribute, by sending the necessary number to each County Superintendent, and it shall be the duty of the Territorial controller upon receiving from the Territorial Superintendent a certificate of the expenses incurred in or the amount due for such printing and distribution of the blanks and laws aforesaid to issue warrants therefor in favor of the persons to whom any sum or sums may be due on account thereof not to exceed in the aggregate the sum of three hundred dollars:

Sixth. To decide disputed points in school law; and all such decisions have the force of law till reversed by the Courts.

Seventh. To authenticate with his official seal all papers and writings issued from his office, and to deliver over, at the expiration of his term of office, on demand, to his successor, all property, books, documents, maps, records, reports and all other papers belonging to his office, or which may have been received by him for the use of his office, for which he must take a receipt of his successor, and file the same in the office of the Territorial Secretary.

To visit the several counties.

It shall be the duty of said Territorial Superintendent to travel in the different counties of the Territory where common schools are taught, so far as possible without neglecting the other duties of his office during at least three months in each year, for the purpose of visiting schools, consulting with county superintendents, perfecting titles to school property, collecting amounts due from escheated estates, holding examinations of candidates for Territorial teachers, certificates, delivering lectures to teacher's institutes and addressing public assemblies on subjects pertaining to the public schools; and his necessary traveling expenses not exceeding the sum of five hundred dollars in any one year, upon his certifying the same to the Governor and Territorial Controller, shall be paid said Territorial Superintendent out of any funds not otherwise appropriated in the Territorial Treasury, and the Controller is hereby authorized and directed to draw his warrant therefor and the Territorial Treasurer to pay the same.

Traveling expenses.

Effect of acts.

SEC. 632. (Sec. 4.) Nothing in the act hereby amended shall operate or be construed as a discontinuance of the office hereby created, but such office shall be deemed to be in existence and the sections hereby amended to be in full force and effect upon the passage of this act.

Repeal.

SEC. 633. (Sec. 5.) All acts and parts of acts in conflict with the provision of this act are hereby repealed.

Act Feb. 10th, 1887, in effect immediately.

CHAPTER III.

TERRITORIAL TREASURER.

SECTION
640. Territorial Treasurer, duties of.
641. Same.
SECTION
642. Same.

Duties of.

SECTION 640. It is the duty of the Territorial Treasurer to receive and hold a special deposit, and place in a separate fund, to be called the Territorial General School Fund, all moneys designated and set apart for that purpose, as specified in the first section of this title, for the safe keeping and disbursement of which moneys he is responsible on his official bond.

Same.

SEC. 641. It is the duty of the Territorial Treasurer to apportion to the several counties the amount of money in the school fund of the Territory subject to be apportioned, to which each is entitled, in proportion to the number of children residing therein between the age of five and twenty-one years, as shown by the last previous report of the County School Superintendent or other officers charged therewith, and make a record of such apportionment in a book to be kept for that purpose, and to furnish to the Territorial Superintendent, and to each County Treasurer, and to each

County School Superintendent, an abstract of such apportionment, and at the same time to furnish to each County Treasurer a warrant for the amount to which his county is entitled, drawn on the Territorial Treasurer in conformity with the provisions of this Title.

Same. SEC. 642. The Territorial Treasurer must, without unnecessary delay, transmit to each County Treasurer the amount due his county, as exhibited by the said warrants; and each County Treasurer must furnish to the Territorial Superintendent a receipt for the same, with duplicate, to the Territorial Treasurer, which receipts the said Superintendent and Treasurer must file in their respective offices.

CHAPTER IV.

COUNTY SUPERINTENDENT.

SECTION
650. County Superintendent, how elected.
651. Duties of.

SECTION
652. Requisition for warrant; duty of Auditor.
653. Special deposit; duty of Treasurer

How elected, compensation, oath of office. SECTION 650. At each general election, there must be elected, in counties containing more than five school districts, a County Superintendent, who holds his office for the term of two years, or until his successor is elected and qualified. The Board of County Commissioners of such counties must fix the compensation of such County Superintendent, and provide for the payment of contingent expenses of his office. Before entering upon his duties he must take and subscribe an oath before the County Recorder faithfully to perform the duties of School Superintendent of his county. In case of a vacancy at any time, the County Commissioners must appoint a County Superintendent to hold office until the next general election and until his successor is elected and qualified. In counties containing not more than five school districts the Probate Judge is ex-officio County Superintendent.

Duties of. SEC. 651. It is the duty of the County Superintendent:

First. To superintend the schools of his county:

Examination of teachers *Second.* To hold examinations on the first Wednesday of February, May, August and November of each year, at such place in his county as he may select, and continue the same, if necessary, from day to day, for not more than three days, till the examinations are completed; and all applicants applying for certificates are required to be in attendance at 10 o'clock A. M., of the first day. He may call to his aid, for the purpose of assisting in the examinations, any competent person:

Permits. *Third.* He may grant permits to teach to any one whom he deems capable, until the next quarterly examination, and to teachers in remote districts in his County he may grant certificates upon the recommendation of any one whom he may appoint to examine such applicant:

Blanks. *Fourth.* To distribute promptly such blanks, reports, forms and laws as are received by him from the Territorial Superintendent of Public Instruction for the use of School Trustees, Census Marshals and Teachers, and any other officer entitled to receive the same:

Fifth. To keep on file in his office the reports of the School Trustees, Census Marshals and Teachers, and to record all his official acts in a book provided for that purpose:

Records of office.

Sixth. To make a full report annually, on or before the 15th day of October in each year, for the school year ending on the 31st day of August next previous thereto, to the Territorial Superintendent, containing a statement of the number of school houses in each district in his county, the number of children of school age, and the number of pupils attending in each district in his county, and the average attendance, the number of libraries and the number and character of volumes in each library, in how many districts, where a school has been taught during the past year, and for how long a time, and what school books have been used in each district, what proportion of children of school age in each district has attended the school during the past year, the amount of money paid to teachers, and the expense as nearly as may be, of conducting each school district. The statement together with such other information and suggestions as he may deem proper or important to the cause of education in the county, must be forwarded to the Territorial Superintendent of Public Instruction, on or before the first day of November of each year, that the same may be embodied in his report to the Legislative Assembly:

Annual reports.

Seventh. To appoint School Trustees to serve till the next school election, for newly organized districts, and to fill by appointment all vacancies that may occur by death, resignation or otherwise, or when the voters of the districts fail to elect trustees in accordance with the provisions of this Title and to draw his requisition on the County Auditor as hereinafter provided, in favor of the Board of Trustees, for the purchase of school books which may be furnished by said trustees to indigent children of the district, making the same payable out of the public school moneys in the County School Treasury apportioned to said district:

Appoint trustees.
Books for indigent children.

Eighth. To collect, by process of law, all penal fines not paid over by Justices of the Peace or other officers required to pay the same, and the same may be recovered by an action in which the Territory of Idaho, by the County Superintendent is plaintiff, and the Justice of the Peace or other officer, neglecting or refusing to pay over said moneys, is defendant.

Fines not paid over.

Ninth. To visit and examine each school in his county at least once in each year, and for every school not so visited, the Board of County Commissioners must, on proof thereof, deduct ten dollars from his salary, which must be applied to the County School Fund. And the County Commissioners must draw a warrant on the school fund in his favor for his actual traveling expenses, incurred in visiting the schools of his county.

Visit schools.

Tenth. To preside over teachers' institutes, if any, held in his county, and to secure the attendance thereat of lecturers or other persons competent to instruct in the art of teaching, and to make such rules and regulations, for the government of teachers and pupils, as he may deem necessary..

Teachers' institutes.

Eleventh. He must, with the concurrence of at least two of the County Commissioners, adopt uniform text books for the use of the schools in his county, and enforce the same.

Text books.

and such books must not be changed for a period of four years; he may invite publishers of school books to submit their various publications for examination and comparison, and no bid must be considered unless accompanied by samples of all books offered for adoption, together with a printed or written guaranty signed by the publisher or his authorized agent, and approved by the commissioners, that if any of their books are adopted, they will maintain the quality and excellence of the books offered for adoption, and that the price will not be increased during the time for which they are adopted. The Superintendent and Commissioners are authorized to make such terms and conditions with publishers as they may deem best for the interest of the county.

Record of examination.

Twelfth. To keep record of his official acts, and of the proceedings of the Examiners, including a record of the standing in each study of all applicants examined.

Reports.

Thirteenth. To make reports when directed by the Superintendent of Public Instruction, showing such matters relating to the public schools as may be required of him, so far as within his knowledge.

Books delivered to successor.

Fourteenth. To preserve carefully all reports of school officers and teachers, and at the close of his official term deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which must be filed in the office of the County Recorder.

Apportionment of county school fund.

Fifteenth. It is the further duty of the County Superintendent to require of the County Treasurer a report of the amount of the school moneys on hand to the credit of the several school funds of the county not already apportioned, and it is the duty of said Treasurer to furnish such report when so required. It is the duty of the County School Superintendent upon receiving the notice from the county Treasurer to apportion the public school moneys, both county and territorial reported by the Treasurer to be in the county treasury of the county, among the several school districts in the following manner, to wit: one-half of the whole amount reported he must divide equally among the several organized districts that have complied with the provisions of this Title, counting one district for each fifty children or fraction over twenty-five, the remaining one-half of said whole amount he must apportion per capita among the several districts in proportion to the number of children in each district as shown by the last report of the Census Marshal of each district, and credit each district with the amount to which such apportionment entitles it. *Provided,* That each district is entitled to at least one apportionment, regardless of the number of school children therein; such apportionment he must place upon record in his office and forthwith furnish a copy thereof to the County Treasurer, and he must report the portion of each district to the Clerk of the Board of Trustees thereof.

Same.

Sixteenth. The County Superintendent must make such apportionment on the first Monday in January in each year, and monthly thereafter, if there is over one hundred dollars in the School Fund; provided, that where any new school district is organized from any part of any other organized district or districts, the County Superintendent, after having ascertained the amount of moneys belonging to said old district or districts, and also the indebtedness and liabilities of said old district or districts, and deducing the same, must apportion to said new districts its due per capita proportion of money or indebtedness, as the case may be, from which it may be formed. Each school district within the Territory must keep at least three months school in each school year to entitle it to draw any of the public moneys.

When to draw warrant in favor of school districts.

Seventeenth. He must draw his requisition on the County Auditor on presentation of an order from the Clerk of Board of Trustees, or of any two of the Board of Trustees; but no such warrant must be drawn in favor of any school district until full and complete returns have been made by the same as required by law, and the certificate of the district Board of Trustees, showng for what purpose in accordance with the provisions of this Title the money is required, and no such school district must receive a warrant for a larger amount than there is cash in the treasury to the credit of said district; and no district must receive any of the public school moneys in which there has not been reported at least ten children by the School Census Marshal at the last report; but each county constitutes at least one school district, irrespective of the number of children of school age in said county.

Duty of Auditor.

SEC. 652. Upon receiving and allowing any requisition from the County Superintendent, the County Auditor must draw his warrant upon the School Fund of the county for the amount thereof, *Provided,* That the Auditor must in no event draw any warrant upon the School Fund without receiving such requisition, which must be recited in his warrant.

Duty of Treasurer.

SEC. 653. It is the duty of each County Treasurer to receive and hold as special deposit, all moneys belonging to the public schools of his county, in accordance with the provisions of this Chapter, and pay them over only on the warrant of the County Auditor.

CHAPTER V.

NEW DISTRICTS.

SECTION
660. Number to organize; Petitions; Public Meetings, Ada County excepted.

Number to organize.

SECTION 660. Whenever at least four heads of families representing at least ten children of school age, petition the County Superintendent for the organization of a new school district, or for the sub-division of or change in the boundaries of an old one, the Superintendent must immediately notify the Clerk of the Board of Trustees of the district or districts to be affected by the change proposed, that a petition is on file in his office, and state in said notice the proposed change or changes to be made, and that the said petition will be presented to the Board of County Commissioners at their next regular meeting for final action. The Superintendent must present to the Board of County Commissioners, at their first regular meeting after having received the same, the said petition, together with all information in his possession relative thereto, and if twenty days have elapsed since the Clerk of the Board of Trustees of the dis-

Petition.

trict to be affected by such change was notified, then the Board of County Commissioners must take into consideration with said petition any remonstrance that may be presented, and may approve, modify, or disapprove of said petition, and their disapproval shall only be upon the ground that such organization or any change of boundaries would be unjust to individuals or the community. It is the duty of the Clerk of the Board of Trustees, when notified by the Superintendent of a proposed change in his district, to post notices in at least three public places in his district that a Petition has been filed in the office of the School Superintendent stating the proposed change to be made, and **Public meeting.** calling a public meeting of the inhabitants of said district, at the school house in said district; or if there be no school house, then at some suitable place in said district, said public meeting to be held within five days from the time of posting said notices; which said meeting is for the purpose of affording to any person or persons who might be injuriously affected by said petition an opportunity of remonstrating against said petition; provided, that this section must not be construed **Exception.** to authorize the increase of districts in Ada County, beyond the limitation fixed in the act creating the Independent School District of Boise City.

CHAPTER VI.

TRUSTEES.

SECTION
665. Election; term of office.
666. Polls, time open.
667. Trustees, duties of and collection of Taxes.
668. Report of bad conduct of pupils.
SECTION
669. Meeting of trustees; census marshal; Enumeration.
670. Compensation of census marshal.
671. Oath of Trustees.
672. Compulsory education.

Election, term of office. 12 ses., 23. SECTION 665. A school election must be held annually on the first Monday in September of each year at each district school house. At the first school election in any newly organized district there must be elected three Trustees, one of whom must hold office for three years, one for two years and one for one year; and the ballots must designate the length of time which said Trustees are to serve.' At the second and every subsequent school election, there must be elected one Trustee for the term of three years; immediately after their election, they must elect from their number a Chairman and Clerk.

Polls, time open. 12 res, 24 SEC. 666. At said election, the polls shall be opened by one of the Board of Trustees, or by any voter if no Trustee be present, at one o'clock, and closed at five o'clock P. M., of the same day; said election shall be conducted generally as other county elections, except that one Judge and one Clerk shall constitute a Board of Election, and that any one of the Trustees may, and it is hereby made their duty, to qualify said Judge and Clerk to perform the duties of said Board of Election to make returns of such election to the County Superintendent immediately, which returns shall be filed in the office of the same.

Duties of trustees. 12 ses., 24. SEC. 667. It shall be the duty of the Trustees of each district:

First. To employ teachers on a written contract, and fix their salaries and length of their term, and they have power

Fixing salaries. 13 ses., 188.

to discharge any teacher for any neglect of duty or any cause that, in their opinion, renders his services unprofitable as a teacher. But no teacher can be discharged before the end of his term without a reasonable hearing;

Visit schools.

Second. To visit the schools in their districts from time to time, and not less than once a month each;

Quorum.

Third. Any two of said Trustees constitute a quorum for the transaction of business;

First meeting.

Fourth. At their first meeting after their election and qualification one of their number must be chosen Clerk of their Board, and the proceedings of all meetings must be in writing, and kept in a book, signed by the Clerk thereof, and such book is a public record;

Charge of property.

Fifth. They have charge of all school property in their districts, and, as such Trustees, have power to receive in trust all real estate or other property conveyed to said school district, and to convey by deed, duly executed and delivered, all the estate or interest of their districts in any school house or site directed to be sold by any vote of their district, and all conveyances made to said Board must be made in their corparate names: To Trustees of School District, No. —— County ——— Idaho Territory, and to their successors in office;

Powers of.

Sixth. Said Trustees have further power when directed by a vote of their district to purchase, receive, hold, and convey real and personal property for school purposes, and to hold, purchase, hire, and repair school houses, and supply the same with necessary furniture in accordance with the provisions of this Title and to fix the location of school houses: *Provided*, that no Trustee shall be pecuniarially interested in any contract made by the Board of Trustees of which he is a member, and any contract made in violation of this section is null and void;

Special taxes.

Seventh. They may, by giving ten days notice in writing, posted in three conspicuous places in their district, call at any time prior to the second Monday of September an election of the legal voters of their district, for the purpose of deciding whether or not a special tax, specifying the rate proposed to be collected, which must not exceed ten mills on the dollar of the taxable property be levied on said district for the building or repairing of school houses, or for the support of public schools in the district, and they may appoint two Judges and a Clerk of said election. The voting at each election must be by ballot, on which ballot must be written or printed "Tax Yes" or "Tax No", and none but actual residents free-holders or heads of families of said district are entitled to vote at such election. If a majority of the votes polled at such election are in favor of such tax, the Board of Trustees must immediately make such levy, and certify the fact of such election, the date thereof, and a careful statement of the rate of tax levied, the year for which levied, and the name or number of the district to the Clerk of the Board of County Commissioners and to the County Assessor, but not more than one such special tax can be levied during any one school year.

Ballot.

Levy.

County assessor.

Upon receiving such statement from the Trustees, the Assessor must assess upon all the property in the district subject to taxation the tax so levied and certified to him as aforesaid, but for that purpose he is not required to take new statements from the owners of property, but his assessment of all special taxes so levied may be computed and made upon the valuation of property as fixed by the County Board of Equalization for Territorial and County purposes, and as appears upon the Assessment Roll in the current year, they must become a lien upon the property assessed from the date of assessment and with all other school or other taxes must become due and payable at the same time as Territorial and County taxes, and in all respects are to be collected in the same way, except that the Assessor must keep a separate list or assessment roll thereof, when paid must be named in his receipt to the tax payer, as a separate item, and he must pay them to the Treasurer as he pays other taxes, but at time of payment he must specify to the Treasurer what taxes they are, and take a separate receipt therefor, and keep separate accounts thereof.

Lien.

Compensation of assessor.

The Assessor must receive three per centum on all such special school taxes so collected by him, having first rendered his account therefor to, and having same allowed by, the Board of County Commissioners, and such Board may, at any time after the levy of such taxes, require of the Assessor such additional bonds, as the Board may deem best, not to exceed double the amount of such special tax.

Blanks

The said Board of County Commissioners must furnish the Assessor such blanks as are needed to comply with the provisions thereof.

Independent districts.

The provisions of this act must not apply to independent school districts now established, which have special laws for the collection of school taxes.

Rate bill.

Eighth. When any repairs are required not exceeding the sum of twenty-five dollars in value, the Trustees may in their discretion levy and collected a rate bill to be paid by all the parents or guardians of all pupils attending such school in proportion to the number of pupils sent to said school by each parent or guardian, but no pupil can be prohibited from attending such school on account of his parent's or guardian's inability to pay said rate, and the clerk of said school district has the same power to enforce the collection of the amounts of said rate bill, as is given to tax collectors in the collection of Territorial and County taxes;

Trustees must furnish.

Ninth. The Trustees of the respective districts must furnish all things not otherwise herein provided for, necessary for the use and comfort of the schools in their districts—such as fuel, improvements, maps, apparatus, and library, and for such purposes may audit and allow accounts against the school fund of their school districts not to exceed twenty per cent. of the amount of said school fund;

Annual report.

Tenth. The Trustees of each district must make a full statement, in writing, annually, on the first day of September, to the County Superintendent of their county, of all matters pertaining to their schools, such as the building and repairing of school-houses, the cost of the same, and from what source paid, the number of months schools have been taught in their districts during the preceding school year, what the monthly salaries paid teachers, and generally such information as will promote the interest and advance the cause of education, and make such other reports as may be required by the Superintendent of Public Instruction or by County Superintendents.

Bad conduct of pupils. 13 ses., 190.

SEC. 668. It is the duty of Trustees of the respective districts on receiving a report from any teacher, of the disorderly or bad conduct of large pupils, to decide how such insubordinate pupils be punished, or whether they be dismissed from school, and the teacher must enforce the decision so made.

Meeting of trustees. 12 ses., 27.

Census, Marshal.

SEC. 669. Said Trustees must, on the first Monday of July of each year, which is hereby declared a day for a regular meeting of said Board, appoint a Census Marshal who must immediately qualify by taking an oath faithfully to discharge the duties of his office to the best of his ability and the Clerk of the Board or either of the Trustees is hereby authorized to administer such oath or affirmation; said Census Marshal must proceed immediately after his appointment and qualification to take a correct enumeration of the children in his district between the ages of five and twenty-one years; provided, that the Census Marshal must not enumerate any children in his district who are not bona fide residents of the same. After the Census Marshal has finished his enumeration he must forthwith report the same to the Trustees of his district, who must hold a meeting to receive the same, and said Trustees must cause a true and certified copy of said Census, together with a certificate of the Marshal having performed his duties, which census or enumeration and certificate must be forthwith transmitted to the County Superintendent of his county.

Enumeration of children.

Compensation. 12 ses., 37.

SEC. 670. For such services well and faithfully performed said Census Marshal is allowed, as full compensation, ten cents for each child so enumerated, and the Clerk of the Board of Trustees must furnish said Census Marshal a certificate of the performance of his duty; and upon presenting such certificate, the County Superintendent must draw his requisition upon the County Auditor for the amount so allowed in favor of said Census Marshal, and must charge the same against his district.

13 ses., 190.

Oath of trustees. 13 ses., 191.

SEC. 671. Trustees must qualify within fifteen days after their election by taking the official oath and an oath faithfully to perform the duties of their office to the best of their ability, and to promote the interest of education in the district, which oath may be administered by either of the retiring Trustees, or any civil officer authorized to administer oaths, and filed in the office of the County Superintendent.

Compulsory education.

SEC. 672. Every present guardian or other person in the Territory of Idaho, having control and charge of a child or children between the ages of eight and fourteen years, shall be required to send such child or children to a public school for a period of twelve weeks in each school year, at least eight weeks of which shall be consecutive, unless such child or children are excused from such attendance by the Board of School Trustees of the School District in which such parents or guardians reside, upon its being shown to their satisfaction that the bodily or mental condition of such child or children has been such as to prevent his, or her, or their attendance at school; or application to study for the period required, or that such child or children, are taught in a private school or at home in such branches as are usu-

Excuses.

ally taught in a primary school, or have already acquired the ordinary branches of learning taught in the public schools: provided in case a public school shall not be taught for the period of twelve weeks, or any part thereof, during the year, within two miles by the nearest traveled road of the residence of any such parent or guardian within the school district—he or she shall not be liable to the provisions of this act.

List of children.

1. It shall be the duty of the Board of School Trustees of each school district in this Territory, on or before the first Monday in September in each year, to furnish the Principal in each public school taught in such district with a list of all children resident in the school district between the ages of eight and fourteen years, said list to be taken from the report of the School Census Marshal. At the beginning of each school month thereafter it shall be the duty of the Principal of each school, in such district, to report to the Board of School Trustees of such district the names of all children attending school during the previous school month, when, if it shall appear at the expiration of three school months, to the Board of School Trustees that any parent, guardian or other persons having charge or control of any child or children, shall have failed to comply with the provisions of this act, the Board shall cause demand to be made upon such parent, guardian or person, for the amount of the penalty hereinafter provided; when if such parent, guardian or other person, shall neglect or refuse to pay the same, within five days after making of said demand, the Board shall commence proceedings in the name of the school district for the recovery of the fine hereinafter provided, before any court having jurisdiction, provided that nothing in subdivision I., shall apply to any child or children who are actually and necessarily compelled to labor for the support of a parent or parents.

Collection of penalty.

Children who labor.

Penalty.

2. Any parent, guardian, or other person having control or charge of any child or children, failing to comply with the provisions of this act, shall be liable to a fine of not less than five dollars, nor more than twenty-five dollars, for the first offense; nor less then ten dollars, no more than fifty dollars for the second and each subsequent offense, besides the cost of collection.

3. Whenever it shall appear to the satisfaction of the Board of School Trustees, of any school district in this Territory, that the parents, guardians, or other persons having control of any child or children, in attendance upon the public school of said district, in accordance with the provisions of this act, are unable to procure suitable books, stationery, etc., for such child or children, it shall be the duty of such Board to procure or cause to be procured for such child or children, all necessary books, stationery, etc., the same to be paid out of the fund of said school district in the same way that other claims against the school district are now allowed and paid.

Books for indigent children.

Disposition of fines.

4. All fines collected under the provisions of this act shall be paid into the county treasury, the same to be placed to the credit of the school district collecting the same.

Notice posted.

5. The Board of School Trustees in each school district shall cause to be posted annually in three public places in

their district, notices of the requirements and penalties of this law.

[Act Feb. 9th, 1887, in effect Aug. 1st, 1887.]

CHAPTER VII.

TEACHERS.

SECTION.
680 Duties of school examiners; certificate to teach; graded certificates.
681. Certificates necessary to teach. Permits.
682. Issuance of certificates.
SECTION
683. Territorial certificates.
684. Cost of certificates.
685. Expense of examination.
686. School register.
687. Duties of teachers.

Duties of examiner. 13 ses., 191.

SECTION 680. It is the duty of County Superintendents at the quarterly examinations to examine all persons applying for certificates to teach, in orthography, reading, penmanship, arithmetic, grammar, modern geography and history of the United States, to test the general knowledge of the candidates and their ability to impart oral instructions relating to the subjects treated in the text books, and no person must be granted a certificate, who in the judgment of the Superintendent, does not possess the ability to impart oral instruction to such a degree as to render the applicant a successful teacher. County Superintendents are authorized to issue two grades of certificates, viz: first grade, valid in the county for two years, to those who answer correctly not less than seventy-five per cent. of the questions asked in any one branch, and not less than ninety per cent. of the general average; second grade, valid for one year to those who answer correctly not less than fifty per cent. in any branch, with a general average of seventy-five per cent. But no certificate must be granted to any person who is not known to be a law abiding citizen and of a good moral character.

Graded certificates.

Certificates necessary; Permits. 13 ses., 191.

SEC. 681. No person is authorized to teach any public school within Idaho Territory who has not a certificate or permit from a County or Territorial Superintendent within this Territory, as provided by this Title, good and valid for the period during which such person teaches such public school,. and no public school money must be paid to any teacher who is not the holder of a valid certificate for the time during which said teacher taught a public school. Provided, that any person who has been actually engaged in teaching in any county for five years is not required to undergo any further examination in said county.

Issuance of certificates; Territorial. 12 ses., 29.

SEC. 682. Territorial certificates, entitling the holder to teach in any school district in the Territory and good for five years, may be issued at any time by the Superintednent of Public Instruction upon an applicant passing a satisfactory examination before him.

Territorial certificate, branches requisite. 12 ses., 29.

SEC. 683. The branches required for a Territorial certificate are: Written Arithmetic, United States History, Reading and Elocution, English Grammar, Common and Physicial Geography, Geology, Physiology, Natural Philosophy, Algebra, Plane Geometry, General History, Political Economy, Civil Government, and the theory and art of education.

The Superintendent of Public Instruction may, upon such examination, if he deem it expedient, call to his assistance any competent person.

12 ses., 29.

SEC. 684. Every person who, upon examination before any County Superintendent, is deemed competent to teach, must, before receiving a certificate, pay to the County Treasurer the sum of three dollars, and upon the presentation of the receipt of the County Treasurer to the County Auditor, and a duplicate thereof to the County Superintendent, he is entitled to receive such certificate. The County Superintendent must furnish to the County Treasurer a list of all persons who have been found competent at any examination.

Cost of certificate.

All money paid into the County Treasury, under the provisions of this Title belongs to the school fund of the county.

12 ses 30. Expense of examination.

SEC. 685. The Board of County Commissioners must audit and allow bills for such blank books, stationery, etc., as may be required in the examination of teachers, and the warrants may be drawn upon the general school fund of the county.

School register. 12 ses., 30.

SEC. 686. Teachers of the public schools must be furnished with a school register by the Trustees of the respective districts for the purpose of registering the names of their pupils and their daily attendance at school, and at the close of the session said register must be delivered to the Clerk of the Board of Trustees of the district; and the teachers must also be furnished by the Trustees with a blank report which they must fill up according to the heading of the same, and transmit it to the County Superintendent of the county at the close of the session or term, and no teacher is authorized to draw his salary until each report is received by the County Superintendent.

Duties of teacher. 12 ses., 30.

SEC. 687. Every teacher in the public school must:

First. Enforce the course of study, the use of text books, and the rules and regulations prescribed for schools, by the County Superintendent.

Second. Hold pupils to a strict account for disorderly conduct on the way to and from school, on the play grounds and during recess; suspend for good cause any pupil in the school and report such suspension to the Board of Trustees for review. If such action is not sustained by them, the teacher may appeal to the County Superintendent, whose decision is final.

Third. Make such reports, in addition to those mentioned in the last section, as may be required by the Superintendent of Public Instruction, County Superintendent or Board of Trustees.

Fourth. Endeavor to impress upon the minds of the pupils the principles of morality, truth, justice and patriotism; teach them to avoid idleness, profanity and falsehood.

CHAPTER VIII.

TEACHERS' INSTITUTES.

SECTION
695. Annual Teachers' Institute Length of session.
696. Teachers must attend.
SECTION
697. Adjourn school.
698. Expense of common schools. How paid.

Annual teachers' institute. 12 ses., 31.

SECTION 695. The County Superintendent in any county in this Territory containing ten, or more organized school districts may, when he believes that educational interests of his county would be promoted thereby, hold annually a Teachers' Institute at such time as he may designate, and such Institute must continue in session not less than two nor more than five days. He must give at least ten days notice of the time and place of holding such Institute by publication in some newspaper published in the county, if there be one; if not, by a written notice to each qualified teacher in the county. Length of session.

SEC. 696. It is the duty of all teachers engaged in the county, and of all persons holding certificates, to attend such Institute and participate in the exercises thereof, and all teachers who may have charge of schools at the time of holding the annual Institute must adjourn their schools for the time during which the Institute is held. Teachers must attend.

SEC. 697. All teachers who may adjourn school for the purpose of attending any annual Institute must be allowed the same pay while in actual attendence as when teaching, and the County Superintendent must certify to the number of days' attendence of each teacher, and the Trustees of the several districts must count them as so many days lawfully employed. Adjourn school.

SEC. 698. The County Superintendent must provide a building, fuel, lights, stationery, janitor's services and all things necessary for the holding of the Institute, and must present an itemized account of such expenses, not to exceed fifty dollars, to the Board of County Commissioners, and it must be paid from the Current Expense Fund of the county. Expenses of, how paid.

CHAPTER IX.

MISCELLANEOUS.

SECTION
705. Books to be used.
706. Non-resident pupils.
707. School year; school month.
SECTION
708. Report of County Superintendent, penalty.

SECTION 705. No books, papers, tracts, or documents of a political, sectarian, or denominational character must be used or introduced in any school established under the provisions of this Title, and any and every political, sectarian, or denominational doctrine is hereby expressly forbidden to be taught therein, nor shall any teacher nor any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this Title. Books to be used. 12 ses., 32.

SEC. 706. Trustees must determine whether pupils outside of their district may attend school in such district and upon what terms. Non-resident pupils.

SEC. 707. The school year within this Territory commences on the first Monday of September of each year. A school month is four weeks of five school days each. School year, school month.

SEC. 708. If the County Superintendent fails to make a full and correct report to the Superintendent of Public Instruction of all statements required by law to be made, he forfeits the sum of one hundred dollars from his salary, and the Board of County Commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the Superintendent of Public Instruction that such reports have not been made. Report of Superintendent. Penalty.

CHAPTER X.

BONDS TO BUILD OR PROVIDE SCHOOL HOUSES.

SECTION
720. Question submitted to vote.
721. Election, how conducted. Bonds.
722. Sale of Bonds.
723. Faith pledged for payment.
724. Tax to pay.
SECTION
725. Redemption
726. Payment of interest.
727. Bonds to be printed.
728. Failure to pay over proceeds.

Question submitted to vote. 13 ses., 59.

SECTION 720. The Board of School Trustees of any school district may, whenever a majority so decide, submit to the electors who are resident-freeholders or heads of families of the district, the question whether the Board be authorized to issue coupon bonds to a certain amount not to exceed four per cent. of the taxable property in said district and bearing a certain rate of interest not exceeding eight per centum per annum, and payable and redeemable at a certain time, for the purpose of building or providing a school house in said district with all necessary furniture, as desks, blackboards, globes, charts, outline maps, etc.

Election, how conducted. Bonds.

SEC. 721. Such elections must be held in the manner prescribed for special election in chapter VI of this Title, the ballots must contain the words "Bonds Yes", or "Bonds No".

If two-thirds of the votes at such election are "Bonds Yes", the Board of Trustees must issue such bonds in such forms as the Board may direct; they must bear the signature of the Chairman of the Board of Trustees, and be countersigned by the Clerk of the school district; and the coupons attached to the bonds must be signed by said chairman and said clerk. And each bond so issued must be registered by the County Treasurer in a book provided for that purpose, which must show the number and amount of each bond, and the person to whom the same is issued. And the said bonds must be sold by the said school trustees, as hereinafter provided.

Sale of bonds.

SEC. 722. The School Trustees must give notice in some newspaper published in the Territory, for a period of not less than four weeks, to the effect that the said school Trustees will sell said bonds, briefly describing the same, and stating the time when and the place where such sale will take place. *Provided*, that the said bonds must not be sold for less than their par value, and the Trustees are authorized to reject any bids, and to sell said bonds at private sale if they deem it for the best interest of the district, and all money, arising from the sale of said bonds must be paid forthwith into the Treasury of the county in which said district may be located, to the credit of said district, and the same are immediately available for the purpose of building or providing the school house authorized by this chapter.

Faith pledged for payment.

SEC. 723. The faith of each school district is solemnly pledged for the payment of the interest and the redemption of the principal of all bonds which are issued under this chapter, and for the purpose of enforcing the provisions of this chapter, each school district is a body corporate, and may sue and be sued, by or in the name of the Board of School Trustees of said district.

Tax to pay.

SEC. 724. The School Trustees of each district must ascertain and levy, annually, the tax necessary to pay the interest as it becomes due, and a sinking fund to redeem the bonds at their maturity, and said tax is a lien upon the property in said school district, and must be collected in the same manner as other taxes for school purposes.

Redemption.

SEC. 725. When the sum in the sinking fund equals or exceeds the amount of any bond then due, the County Treasurer shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof, and preference must be given to the oldest issue; and if at the expiration of the said thirty days, the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon must cease; but the Treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds are so purchased or redeemed the County Treasurer must cancel the same by writing across the face of each bond in red ink the word "Redeemed" and date of such redemption.

Payment interest.

SEC. 726. The County Treasurer must pay out of any moneys belonging to a school district the interest upon any bonds issued under this chapter by such school district when the same becomes due, upon the presentation at his office of the proper coupon, which must show the amount due and the number of the bond to which it belonged; and all coupons so paid must be reported to the School Trustees at their first meeting thereafter.

Bonds to be printed.

SEC. 727. The School Trustees of any district must cause to be printed or lithographed, at the lowest rates, suitable bonds, with the coupons attached, when the same become necessary, and pay therefor out of any moneys in the county treasury to the credit of the school district.

Failure to pay over proceeds.

SEC. 728. If any of the School Trustees fraudulently fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for by this Chapter, they are guilty of felony.

CHAPTER XI.

PROVIDING FOR THE ESTABLISHING OF INDEPENDENT SCHOOL DISTRICTS.

SECTION

729. Formation of Independent Districts.
730. Rights and obligations. Powers.
731. Officers.
732. Election of Trustees.

SECTION

733. Contracts, when void. Organization of Board.
734. Meetings of Board.
735. Powers of Board.
736. Existing laws.

Formation of independent districts.

Election.

SECTION 729. When any school district within this Territory as defined by the Board of County Commissioners, has within its limits taxable property of the amount of two hundred thousand dollars, or over, as shown by the last assessment roll for the county, it may be organized into an independent school district, upon one-fifth or over of those within the district, who are qualified to vote at school elections, petitioning the said Board for the establishment of such district as an independent school district, and if a greater number of such qualified voters do not remonstrate against such establishment, the Board must first, clearly by its order of record, define the boundaries of such district, if not already done, and within one month order that the question of so establishing such independent school district must be submitted to a vote of all the electors of the district, who under the provisions of this title, are authorized to vote for the levy of taxes and issue of bonds, and must make the necessary arrangements for such election, giving at least twenty days notice thereof and the time and place of holding the same.

Order.

If a majority of those so voting, vote in favor of so organizing such independent district, said Board must make its order of record, and declare such district established, and designate it as the Independent School District——— (state name and number of District) in ——— County, Idaho Territory.

Name.

Rights and obligations.

SEC. 730. The district so established is constituted a body corporate and succeeds to the title of all property rights and privileges, and assumes, and must discharge and pay all debts, obligations, and duties belonging to, or devolving upon the old district of which it is so framed and established, and by its corporate name it may:

Powers.

First. Make contracts, sue, and be sued.

Powers.

Second. Take, hold, and convey such real and personal property only, as is needed for actual school purposes.

Third. To have a Corporate Seal.

Fourth. To choose such officers as herein provided for.

Officers.

SEC. 731. The officers of such district consist of a Board of Trustees composed of six qualified electors who are resident freeholders within the district.

Trustees.

The first Board of Trustees must be appointed by the Board of County Commissioners, immediately after the district is so established, and hold their offices for terms as follows, to wit:

Two until the next school election held under the provisions hereof, two for two, and two for four years, after such election, and until their successors are elected and qualified, and said Board so appointing must designate the term of each Trustee so appointed.

Election of trustees

SEC. 732. There must be an election for two members of the Board of Trustees, to be held on the first Monday of September following the establishment of such district, and bi-ennially thereafter an election must be held to elect two Trustees; the Clerk of the Board must give at least ten days notice of the time and place of such election by publication in a newspaper or by three posted notices in the district, and at all elections under this Chapter, voters must have the same qualifications prescribed by this Title for school elections. At all such elections any person offering to vote may be challenged and required to take all oaths required of voters at general elections in this Territory, and on refusing to take such oaths must not be allowed to vote, and the Board of Trustees may appoint, for all such elections, two Judges and one Clerk.

Notice.

Elections

Tie vote.

Voting must be by ballot and if upon counting the ballots there is a tie, and three qualified persons have the highest, and an equal number of votes, the Board of Trustees must select two from among the three, and when there is a failure to elect by reason of a tie vote, the Board of Trustees must select.

Vacancies. If any Trustee dies, removes from the district, or ceases to have the qualifications for such office, or from any cause his office is vacant, or he neglects or refuses to act, or without excuse ceases to attend the meetings of the Board for four successive regular meetings thereof, his office thereby becomes vacant, and a majority of said Board of Trustees may appoint another qualified person to fill his unexpired term.

Contracts when void. SEC. 733. No Trustee must be interested in any contract let or made by or with the Board, or any officer thereof, or in any supplies furnished to or for said district or a surety for the performance of any contract with the said Board or district, or the agent or partner of any contractor, with said Board or district, and no action can be maintained, or recovery had against said Board or district upon any contract or obligation in which any Trustee is so interested, but the same is void.

Oath. Each Trustee must before entering upon the duties of his office take and subscribe the official oath, which must be filed with the County School Superintendent, and immediately after the appointment of such Trustees, by the Board of County Commissioners as above provided, and after each bi-ennial election, the Trustees, or a majority thereof, must meet at the school house and organize as a Board, and from their number must elect a Chairman, a Clerk, and Treasurer, or they may elect as Treasurer some competent and responsible person, who is not a Trustee. Organization of board.

No compensation. No school officer whatever must receive any pay or compensation for his time or services, or in any way be allowed to make any pecuniary profit or a gain by reason of his office, and any school officer or person who has the custody, in any way, of any school funds must give good bonds, with at least two good sureties, in double the amount of the funds likely, at any time, to be in his custody. Bond.

Meetings of board. SEC. 734. Regular meetings of the Board of Trustees must be held on the second Monday of each month, and special meetings may be called by the Chairman of the Board, or by any two Trustees, by personal notice of the time and place of such meeting to each member of the Board, or if he cannot be found, by leaving such notice at his place of residence, with some person of suitable age and discretion. Four Trustees constitute a quorum for the transaction of any business, but a less number may adjourn any regular meeting from time to time until a quorum can be obtained, but no meeting of the Board, not provided for by its rules or by law, is legal, unless all the members thereof have been notified as provided for in this section. Quorum.

Powers of board. SEC. 735. The Board of Trustees of said district must have power to, and it is their duty:

By-laws. *First.* To make such by-laws for their own government and for the government of the schools of the district as they may deem expedient, not inconsistent with the provisions of this Chapter.

Teachers. *Second.* To employ or discharge teachers, mechanics and laborers, and to fix, allow and order paid, their salaries and

Tuition. compensation, and to determine the rates of tuition for now resident pupils.

Text books. *Third.* To fix the course of study, the exercises, and the kind of text books to be used: *Provided*, that but one kind of text books of the same grade, or branch of study, shall be used in the same department of the school, and that after the adoption of any kind of book it must not be changed in less than three years, unless the price thereof is unwarrantable advanced, or the mechanical quality lowered, or the supply stopped. Change of.

Furniture. *Fourth.* To provide for school furniture, fixtures and apparatus, and for everything needed in the school house or for the use of the Board.

School houses. *Fifth.* To rent, repair and insure school houses and property, and preserve the same for the benefit of the schools of the District.

Build. *Sixth.* To build or remove school houses and buildings, and to purchase or sell school lots.

Pupils. *Seventh.* To suspend or expel pupils from school, who refuse to obey the rules thereof, and to exclude from school, children under six years of age.

Teachers. *Eighth.* To determine the number and qualifications of teachers that shall be employed, and length of time that the school shall be kept; to fix the time for the opening or closing of school, and for the dismissal of primary pupils before the regular time for closing schools. School hours.

Indigent pupils. *Ninth.* To provide books for the use of indigent children, on the written statement of the teacher that the parents of such children are not able to purchase them.

Books. *Tenth.* To require pupils to be furnished with proper and suitable books, as a condition of membership in the schools.

Sectarian books *Eleventh.* To exclude from the schools, and school libraries of said district, all books, tracts, papers, or catechisms, of a sectarian nature.

Teachers. *Twelfth.* To require teachers to conform to the law and the regulations of the Board.

Morals. *Thirteenth.* To protect the morals and health of the pupils while at school.

SEC. 736. All the provisions of this Title, providing for a public school system, wherein not contradictory to or inconsistent with, the provisions of this Chapter, and which may be made applicable to the objects hereof, are adopted as a part of the law governing the establishment and management of Independent School Districts. Existing laws.

[Act of February 10th, 1887, in effect immediately.]

TITLE IV.

ORDNANCE STORES.

SECTION
740. Ordnance under control of government.
741. Expenses for keeping same, how paid.
SECTION
742. Loan of arms to Grand Army posts.
743. Arms to be drawn from Federal Government.

SECTION. 740. All ordnance and ordnance stores belonging to the Territory are under the control and management of the Governor as commander-in-chief of the militia of the Territory to be by him held as the property of the Territory and to be used solely for the purpose of public defense under such rules and regulations as the Governor may prescribe.

Ordnance under control of government.
Comp. laws, 717.

SEC. 741. For the purposes of defraying the necessary expenses of preserving ordnance, and ordnance stores, the Territorial Controller must, upon the written order of the Governor, issue warrants upon the Territorial Treasurer for the sum necessary to meet such expenses; said warrants to be paid out of any money in the treasury not otherwise appropriated; the said ordnance and ordnance stores must be stored in the Capitol building, and the warrants drawn by the order of the Governor, for all expenses connected with said ordnance and ordnance stores, must not exceed one hundred and fifty dollars per annum.

Expenses for keeping same, how paid.
Comp. laws, 717.

SEC. 742. That the Governor of this Territory is hereby empowered to loan to the Grand Army Posts within the Territory, arms and equipments not to exceed six stands to each Post, upon said Grand Army Posts receipting for the same; with a provision that they be returned on demand, and without expense to the Territory. And in case any part of said arms and equipments are lost by fire or otherwise, that the value thereof as stipulated when the arms were drawn, together with the freight thereon, be returned to the Territorial treasury.

Loan of arms to Grand Army posts.

SEC. 743. And, whereas, this Territory has to its credit under the law for arming the militia (Sec. 1661 Revised Statutes) the sum of eleven thousand two hundred fifty-seven and 68-100 dollars ($11,257 68-100) which can be drawn by the Governor at the prices named in said statutes, therefore be it further

Resolved, That the Governor of the Territory of Idaho be requested to draw said arms and equipments, and of such kinds as he may deem advisable, and upon receipt of the same, said arms and equipments must be stored in the Capitol building and must be under the care and supervision of the janitor of said building, subject to the order of the Governor. [Resolution Jan., 15, 1887, in effect immediately.]

Arms to be drawn from federal government.

TITLE V.

PUBLIC INSTITUTIONS.

CHAPTER I.

INSANE ASYLUM.

SECTION
750. Under control of Board of Directors.
751. Board, how appointed, and qualified, and organized.
752. Powers and duties of Board.
753. Moneys for support of Asylum, how drawn.
754. Board must contract for supplies.
755. Compensation of Directors.
756. Qualifications of Medical Superintendent.
757. Must reside at Asylum.
758. General powers and duties.
759. Must estimate expenses and report to Directors.
760 Salary.
761. Bond.
762. Salaries, when payable.
763. Approval and filing of official Bonds.
764. Discharge of patients on recovery.
765. Insane convicts; reception and return of.
766. Person having contagious disease not admitted.
SECTION
767. Restriction upon admission of non-residents.
768. Disposition of moneys unexpended at discharge or death of patient.
769. Examination, before whom.
770. Two witnesses.
771. One physician.
772. Witnesses, duty of.
773. Physicians, duty of.
774. Certificate of physicians.
775. To be made on forms, etc.
776. Action of Judge. Commitment.
777. Sheriff to deliver insane person, commitment, etc., at Asylum.
778. Money found on insane person to be delivered at Asylum.
779. Idiots, imbeciles, etc., not to be admitted.
780. Fees of Sheriff.
781. Fees of physicians.
782. Insane person able to pay.

Under control of directors. 13 ses., 65

SECTION 750. The Idaho Insane Asylum located at Blackfoot, is under the management and control of a Board of Directors, consisting of three persons.

Board, how appointed, etc. 13 ses., 65-66.

SEC. 751. Said Board of Directors must be nominated, and by and with the advice and consent of the Legislative Council appointed by the Governor. Their term of office is two years and until their successors are appointed and qualified. Before entering upon the duties of their office they must each take and subscribe an oath to support the Constitution of the United States and well and faithfully discharge their duties according to law, and the oath provided for county officers. They must elect one of their number President, and another Secretary.

Powers and duties of board. 13 ses., 66-67.

SEC. 752. The powers and duties of the Board of Directors of the Insane Asylum are as follows:

1. To make by-laws, not inconsistent with the laws of this Territory, for their own government and the Government of the Asylum.

2. To hold stated meetings at the Asylum for the transaction of business quarterly, and they may provide in their by-laws for calling special meetings when necessary.

3. To keep a record of their proceedings open at all times to the inspection of any citizen.

4. To elect a medical superintendent, to hold his office during the pleasure of the Board.

5. To receive, take and hold property, both real and personal, in trust for the Territory and for the use and benefit of the Asylum.

6. To appoint all officers and employes of the Asylum, prescribe their duties, and remove them when in their judgment the good of the public service requires.

7. To visit the Asylum once in three (3) months, and keep themselves constantly advised of all items of labor and ex-

pense, and the condition of the buildings and the property of the Asylum, and shall have power to make such improvements, as, in their judgment, are actually necessary for the care of the inmates; not to exceed four thousand (4,000.00) dollars, for permanent improvements, for the years 1887 and 1888.

The Board have discretionary power in case of absolute necessity to remove patients to the nearest possible safe and appropriate place.

8. To cause the accounts of the asylum to be so kept and reported as to show the quality, quantity, cost and vendor of every article purchased.

9. To examine and audit the expenditures for salary of employes and all other expenses incident to the conduct of the Asylum, and care and maintenance of the patients, and if approved by them, to certify the same to the Controller.

10. To make regulations and fix the terms for the admission of insane persons who are not indigent or who are not residents of the Territory. All receipts from such source must be paid into the Territorial treasury.

11. To make diligent inquiry into the departments of labor and expenses, the condition of the Asylum and its property.

12. To report to the Governor on the 15th day of September in each year, a statement of the receipts and expenditures, the condition of the Asylum, the number of patients during the preceding year under treatment, and of such other matters touching the duties of the Board as is advisable. To make a bi-ennial report to the Governor substantially in the same manner as above, thirty (30) days before each session of the Legislature. To report to the Territorial Controller, which must be a certified copy of the records of each meeting of the Board.

Money for support of asylum, how drawn.

SEC. 753. All itemized bills of purchases and other expenditures made, when examined by the Board of Directors and found correct, must be certified by the President of the Board then sitting, and the same transmitted to the Controller, to be audited and allowed by him, in the same manner as other accounts against the Territory are audited and allowed.

And the Territorial Controller must draw his warrant on the Territorial Treasurer for the amount so audited by him.

And the said Treasurer is hereby authorized and required to pay the same out of any money in the Territorial treasury, not otherwise appropriated.

Board must contract for supplies.
13 ses., 68.

SEC. 754. Upon the receipt of each report from the Superintendent of provisions, fuel, and clothing required as hereinafter provided, the Board of Directors must advertise in two newspapers published in the Territory, for four successive weeks, for contracts for furnishing said supplies, or so much thereof as they deem necessary. The Board may reject any and all bids, and no more than the market price must be paid for any article purchased for the Asylum. All contracts awarded must be to the lowest bidder upon his giving satisfactory security for the faithful performance of his contract. Nothing in this section prevents the Board from purchasing contingent supplies at the lowest market rate until the next semi-annual letting. No director, Superintendent or employe must be pecuniarily interested in any contract for supplies furnished for the Asylum.

Compensation of directors.

SEC. 755. The Directors must each be paid five ($5.00) dollars per day for each day actually employed, which must include the time employed in traveling to and from the Asylum; provided that no Director shall receive more than one hundred ($100.00) dollars per annum for per diem service.

And in performing the necessary visitations required by this chapter, and must be remembered for all the necessary expenditures incurred in their official duties: such accounts to be allowed and paid as other accounts against the Asylum are allowed and paid.

Qualifications medical superintendent. 13 ses., 67

SEC. 756. The Medical Superintendent must be a graduate in medicine and must have practiced his profession five years after the date of his diploma.

Must reside at and give his entire time to the asylum. 13 ses., 67.

SEC. 757. He must reside at the Asylum and give his entire time and attention to promote the best interests of the patients. His duties not specified in this chapter, must be prescribed by the Board of Directors in their by-laws.

General powers and duties. 13 ses., 68.

SEC. 758. He is the chief executive officer of the Asylum, with powers and duties as follows:

1. To control the patients, prescribe the treatment, and prescribe and enforce the sanitary regulations of the Asylum.

2. With the consent of the Board of Directors, to fix the number and compensation of, and appoint, control, and remove the attendants and assistants.

3. To prescribe and enforce the performance of the duties of the attendants and assistants.

4. To ascertain and report to the Board of Directors the amount, character, and quality, of provisions, fuel, and clothing required for the six months ending on the first of June and December in each year.

5. With the consent of the Board of Directors to make any expenditure necessary in the performance of his duties, except for provisions, fuel and clothing.

6. To receive and pay to the Territorial Treasurer all moneys found upon insane persons.

7. To keep a daily record of his official acts in the mode prescribed by the by-laws.

8. To make up his annual accounts to the first of July in each year, and as soon thereafter as possible to report a statement thereof, and of the general condition of the Asylum, to the Board of Directors.

Estimate of expenses.

SEC. 759. He must estimate quarterly in advance, the probable expenses of the Asylum, and submit such estimate to the Directors at their stated meetings, for their consideration and approval.

Salary.

SEC. 760. The salary of the Medical Superintendent must be fixed by the Board of Directors.

Bond.

SEC. 761. He must execute an official bond in the sum of five thousand dollars with two or more sufficient sureties, conditioned that he will faithfully discharge his duties as such officer.

Salaries, when payable.

SEC. 762. The salaries and compensation fixed by the provisions of this chapter must be paid quarterly.

SEC. 763. The official bonds required by the provisions of this Chapter must be approved by the Board of Directors, and filed in office of the Controller. Approval of bonds, etc.

SEC. 764. Insane persons received in the Asylum must upon recovery be discharged therefrom. Discharge of patients.

SEC. 765. Insane convicts must be received into the Insane Asylum, and returned to the Territorial Prison again as provided in the Penal Code. Insane convicts. 13 ses., 71.

SEC. 766. No person laboring under any contagious or infectious disease must be admitted into the Asylum as a patient. Person having contagious disease. 13 ses., 68.

SEC. 767. No insane person non-resident of this Territory, must be received into the Asylum unless he became insane within this Territory, and the indigent insane of this Territory must have the preference. Non-residents, admission of. 13 ses., 68-69.

SEC. 768. If at the time of the discharge of a person from the Asylum, or after the death and burial of any person therein confined, there remains in the custody of the Directors or Superintendent any moneys paid for the support or maintenance of such person, it must, upon demand, be repaid. Disposition of moneys.

SEC. 769. Whenever it appears by affidavit to the satisfaction of a magistrate of the county that any person within the county is so far disordered in his mind as to endanger health, persons, or property, he must issue and deliver to some peace officer for service a warrant, directing that such person be arrested and taken before any Judge of a Court of record within the county for examination. Examination, before whom. 11 ses., 301.

SEC. 770. When the person is taken before the Judge he must issue subpœnas to two or more witnesses, best acquainted with such insane person, to appear and testify before him at such examination. Two witnesses.

SEC. 771. The Judge must also issue subpœnas for at least one graduate of medicine to appear and attend such examination. One physician.

SEC. 772. At the examination the persons subpœnaed must appear and answer all questions pertinent to the matter under investigation. Witnesses, duty of.

SEC. 773. The physician must hear such testimony, and must make a personal examination of the alleged insane person. Physician, duty of.

SEC. 774. The physician, after hearing the testimony and making the examination, must, if he believes such person to be dangerously insane, make a certificate, under his hand, showing as near as possible: Certificate of physician.

1. That such person is so far disordered in his mind as to endanger health, person, or property;
2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease;
3. The nativity, age, residence, occupation, and previous habits of the person;
4. The place from whence the person came, and the length of his residence in this Territory.

SEC. 775. The certificate must be made in the form prescribed by, and, if they can be had, upon blanks furnished by the Medical Superintendent of the Asylum. To be made on forms, etc.

SEC. 776. The Judge, after such examination and certificate made, if he believes the person so far disordered in Commitment.

his mind as to endanger health, person, or property, must make an order that he be confined in the Insane Asylum.

Sheriff to deliver, etc.

SEC. 777. The insane person, together with the order of the Judge and certificate of the physician, must be delivered to the Sheriff of the county, and by him must be delivered to the officer in charge of the Insane Asylum.

Money found on insane person to be delivered at asylum.

SEC. 778. Any moneys found on the person of an insane person at the time of arrest must be certified to by the Judge and sent with such person to the Asylum, there to be delivered to the Medical Superintendent, who must deliver the same to the Territorial Treasurer. If the sum exceed one hundred dollars, the excess must be applied to the payment of the expenses of such person while in the Asylum; if the sum is one hundred dollars or less, it must be kept and delivered to the person when discharged, or applied to the payment of funeral expenses if the person dies at the Asylum.

Idiots, etc., not admitted.

SEC. 779. No case of idiocy or imbecility, or simple feebleness of mind, must be maintained at nor must any case of delirium tremens be admitted into the asylum.

Fees of sheriff.

SEC. 780. The person delivering insane persons to the Asylum is allowed therefor forty cents per mile, one way only, for the legal distance from the county seat of the county where such insane person was committed to the Asylum; and for every additional patient taken at the same time, twenty cents per mile. He must also receive the necessary expense of an assistant, when more than one person is required to convey such insane persons; payment thereof to be made by the County Treasurer of the county where the examination was had, on the order of the Board of Commissioners.

Fee of physician.

SEC. 781. The physician attending each examination of an insane person is allowed five dollars, to be paid by the County Treasurer of the county where the examination was had, on the order of the Board of County Commissioners.

Insane person able to pay.

SEC. 782. The Judge must inquire into the ability of insane persons committed by him to the Asylum to pay for his transportation to the Asylum, and the expense of the examination, and bear the actual charges and expenses for the time that such person may remain in the Asylum. In case an insane person committed to the Asylum under the provisions of this chapter, is possessed of real or personal property sufficient to pay such charges and expenses, the Judge must appoint a guardian for such person, who is subject to all the provisions of the general laws of this Territory in relation to guardians, as far as the same are applicable; and when there is not sufficient money in the hands of the guardian, the Judge may order a sale of property of such insane person, or as much thereof as may be necessary, and from the proceeds of such sale the guardian must pay said expenses and the Board of Directors the sum fixed upon by them each month, quarterly in advance, for the maintenance of such ward; and also out of the proceeds of such sale, or such other funds as he may have belonging to his ward, pay for such clothing as the Medical Superintendent may from time to time furnish to such insane person; and he must give a bond with good and sufficient sureties, payable to the Board of Directors and approved by the Judge,

Guardian.

Bond of.

for the faithful performance of the duties required of him by this section as long as the property of his insane ward is sufficient for the purpose.

CHAPTER II.

TERRITORIAL LAW LIBRARY.

SECTION
800. Location of Library. Secretary to be Librarian.
801. Duties of the Librarian.
802. Who may take books from Library.
803. Same.
804. When books to be returned.
805. Same.
SECTION
806. Liability for loss or injury.
807. Library Fund.
808. How expended.
809. Duty of Clerks of Courts.
810. Library, time to be kept open.
811. Bond of Librarian.
812. Expenditures, how audited and paid.

SECTION 800. The Territorial Law Library is located in the Library Room of the Capitol Building and the Territorial Secretary is Librarian thereof. Location of library, who librarian.

SEC. 801. It is the duty of the Librarian: Duties of librarian.

1. To make rules and regulations not inconsistent with law for the government of the Library;

2. To sell or exchange duplicate copies of books;

3. To keep in order and repair the books and property in the Library;

4. To report to the Governor bi-ennially a statement of his transactions;

5. To number and stamp all books and maps belonging to the Library, and to keep a catalogue thereof;

6. To have bound all books that require rebinding and provide necessary shelves and furniture for the Library Room, at a cost not to exceed one hundred and fifty dollars per annum;

7. To keep a register of all books and property added to the Library and of the cost thereof;

8. To keep a register of all books taken from the Library.

SEC. 802. Books may be taken from the Library by the Justices of the Supreme Court. At the request of a counselor of the Court, the bailiff must take from the Library to the Court room books for use in the argument of any cause. Who may take books.

SEC. 803. Books may be taken from the Library by the members of the Legislature during the session thereof, and by other Territorial officers at any time. Same.

SEC. 804. Books taken by members of the Legislature must be returned at the close of the session; and before the Secretary pays any member of the Legislature for his last weeks salary, he must be satisfied that such member has returned all books taken by him and paid for any injuries thereto. Books taken by members of Legislature.

SEC. 805. The Controller, if notified by the Librarian that any officer has failed to return books taken by him within the time prescribed by the rules, and after demand made, must not draw his warrant for the salary of such officer until the return is made, or three times the value of the books or of any injuries thereto, has been paid to the Librarian. Books taken by officers must be returned.

SEC. 806. Every person who injures or fails to return any book taken is liable to the Librarian in three times the value thereof. Liability for injury to books.

SEC. 807. The Territorial Library Fund consists of all moneys paid to the Territorial Treasurer for the use of said Library fund. Comp. laws, 788.

fund by attorneys at law upon their admission to the practice, as required by the Code of Civil Procedure, and any other moneys and fees required by law to be paid into said fund and the annual sum of one hundred and fifty dollars, which is hereby appropriated annually out of the Territorial Treasury to said Fund.

How expended. Comp. laws, 783.

SEC. 808. The Library fund must be expended by the Librarian, under the direction of the Justices of the Supreme Court for the purchase of law reports, digests, and text-books. The Controller must draw his warrant upon said fund in such sums as may be specified in the order of the Justices, or any one of them, not exceeding the amount in said fund, to defray the cost of such purchases.

Duties of clerks of courts. Comp. laws, 788.

SEC. 809. The Clerk of the Supreme Court and the several clerks of the District Courts must annually report to the Territorial Treasurer the names of all attorneys admitted or licensed to practice in the courts of which they are Clerk respectively.

Library, time to be kept open. Comp. laws, 789.

SEC. 810. The Librarian must keep the Library open every day except non-judicial days, from nine o'clock, A.M. during the sessions of the Legislature or the Supreme Court, until nine o'clock P. M., and at other times until five o'clock P. M.: *Provided*, That the expense to the Territory must not exceed the sum of three hundred dollars per annum; to be paid monthly.

Bond of librarian.

SEC. 811. The Librarian must execute an official bond in the sum of one thousand dollars.

Expenditures, audited and paid how.

SEC. 812. The Territorial Controller is authorized to audit all expenditures under this chapter, and if authorized, to allow the same and draw his warrant on the Treasurer for the amount which the Treasurer must pay out of any moneys in the treasury applicable thereto, provided that no warrant must be drawn upon the library fund in excess of the amount then in that fund.

TITLE VI.
PUBLIC WAYS.

CHAPTER I.
FLOATING TIMBER.

SECTION
830. Definition of timber.
831. Owner may reclaim timber.
832. If not taken away to be turned over to Sheriff.
833. Application of proceeds when sold.
SECTION
834. Subsequent disposition of proceeds.
835. Dam or boom, how constructed.
836. Boom or weir must have sluiceway or passage.

SECTION 830. The word "timber" is used in this chapter to designate all logs, boards, planks, lumber, railroad ties, poles, rails, posts, cordwood or beams, and whether in rafts or otherwise, but does not include the sort of wood commonly called driftwood.

Definition of timber. 13 ses., 177.

SEC. 831. Whenever any timber drifts upon any island in any of the waters of this Territory, or upon the bank of any such waters, the owners of the timber may remove it on payment or tendering to the owner or occupant of the land the amount of the damages which he has sustained by reason thereof, and which may accrue in its removal; and if the parties cannot agree as to the amount of such damages, either party may have the same appraised by two disinterested citizens of the county, who may hear proofs and determine the same at the expense of the owner of the timber.

Owner may reclaim timber. 13 ses., 178.

SEC. 832. If the owner of such timber does not, within three months from the time it was so drifted, take the same away, the owner or occupant of the land must deliver a bill of his charges and appraisement of damages, together with the timber, to the Sheriff of the county, and thereafter the Sheriff must sell the same after three days' notice posted in three public places of the precinct.

To be turned over to sheriff.

SEC. 833. When sold, the proceeds of the timber must be applied, first, to the payment of the charges of the sale, and in liquidation of the expenses and damages awarded to the person entitled thereto; and the residue must be paid to the County Treasurer, to be by him paid over to the owner, or his representative or assigns, on the production of satisfactory proof of ownership to the Probate Judge, and on his order therefor made within one year after its receipt.

Application of proceeds when sold.

SEC. 834. The rejection by the Probate Judge of any claimant's right to such proceeds is conclusive, unless within six months thereafter he commences action therefor. In case no claim is made or sustained to such proceeds the same must, by the County Treasurer, by placed in the common school fund of the county.

Subsequent disposition of proceeds.

SEC. 835. No dam or boom must be hereafter constructed or permitted on any creek or river, unless said dam or boom has connected therewith a sluiceway, lock or fixture sufficient and so arranged as to permit timber to pass around, through or over said dam or boom without unreasonable delay or hindrance.

Dam or boom, how constructed. 13 ses., 178.

Boom or weir must have passage.
13 ses., 178.

SEC. 836. Any boom or weir in or over any creek or river so constructed as to prevent the passage of logs or lumber, is a public nuisance, which may be abated unless a suitable sluiceway, lock or passage, be made thereon, within thirty days after written notice given by any person interested, and any person owning, holding or occupying such boom or weir, is liable to pay five dollars for every day the same remains in or over said creek or river, after thirty days' notice to remove the same, and be liable for any damages sustained by individuals by reason of said boom or weir.

CHAPTER II.

HIGHWAYS.

ARTICLE I.

Enumeration of Highways.

SECTION
850. What are highways.
851. Origin of highways.
852. Abandonment of highways.

SECTION
853. Duties of clerk relative to road matters

What are highways.
13 ses., 162.

SECTION 850. Highways are roads, streets or alleys, and bridges, laid out or erected by the public, or if laid out or erected by others, dedicated or abandoned to the public.

Origin of highways.
13 ses., 162.

SEC. 851. Roads laid out and recorded as highways, by order of the Board of Commissioners, and all roads used as such for a period of five years, are highways. Whenever any corporation owning a toll bridge or a turnpike, plank or common wagon road is dissolved, or discontinues the road or bridge, or has expired by limitation, the bridge or road becomes a highway.

Abandonment of highways.
13 ses., 172.

SEC. 852. A road not worked or used for the period of five years ceases to be a highway for any purpose whatever.

Duties of clerks relative to road matters.
N. S.

SEC. 853. The Clerk of the Board of Commissioners must keep a book in which must be recorded separately all proceedings of the Board relative to each road district, including orders laying out, altering, and opening roads; and in a separate book a description of each road district, its overseers, its roads, highways, contracts, and all other matters pertaining thereto.

ARTICLE II.

Rules and Restrictions respecting the Use of Highways.

SECTION
860. The public easement.
861. Adjoining owner may construct sidewalk.
862. May plant trees.

SECTION
863. Gas, water, and railroad corporations may lay down conductors and track.

The public easement.
N. S.

SECTION 860. By taking or accepting land for a highway, the public acquire only the right of way and the incidents necessary to enjoying and maintaining it. All trees within the highway, except only such as are requisite to make or repair the road or bridges on the same land, are for the use of the owner or occupant of the land.

Adjoining owner may construct sidewalks.
N. S.

SEC. 861. Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to the authority conferred by law on the Board of Commissioners and the Overseers of Highways;

and any person using such sidewalk with horse or team without permission of the owner, is liable to such owner or occupant in the sum of five dollars for each trespass, and for all damages suffered thereby.

May plant trees.
N. S.

SEC. 862. Any owner or occupant of land adjoining a highway not less than three rods wide, may plant trees on the side contiguous to his land. They must be set in regular rows, at a distance of at least six feet from each other and not more than six feet from the boundary of the highway. If the highway is more than six rods wide the row must not be less than six nor more than twelve feet from the boundary of the highway. Whoever injures any of them is liable to the owner or to the occupant for the damage which is thereby sustained.

Gas, water and railroad corporations may lay track, etc.
N. S.

SEC. 863. Every gas, water, or railroad corporation has power to lay conductors and tracks through the public ways and squares in any city, village, or town when it is established, with the consent of the municipal authorities thereof, and under such reasonable regulations and for such compensation as the authorities and the law prescribes.

ARTICLE III.

Powers and Duties of Boards of Commissioners and Highway Officers over Highways.

SECTION
870. Duties of Commissioners.
871. Road district, how defined and described.
872. Overseers notified to give bond, take oath, etc.
SECTION
873. Duties of Road Overseer.
874. General Road Fund for general road purposes.

Duties of commissioners.
13 ses., 166.

SECTION 870. The Board of Commissioners, by proper ordinances, must:

1. Divide the county into a suitable and convenient number of road districts and appoint therefor annually, or whenever vacancies occur, Overseers, with power to remove them at pleasure;

2. Cause to be surveyed, viewed, laid out, recorded, opened, and worked, such highways as are necessary for public convenience, as in this chapter provided;

3. Cause to be recorded as highways such roads as have become such by usage or abandonment to the public;

4. Abolish or abandon such as are unnecessary;

5. Contract, agree for, purchase or otherwise acquire the right of way over private property for the use of public highways; and for that purpose institute, or require the District Attorney to institute proceedings under the Code of Civil Procedure, and to pay therefor from the District Road Fund of the particular district;

6. Let out by contract the improvement of highways: and the construction and repair of bridges or other adjuncts to highways, when the amount of work to be done by contract exceeds one hundred dollars;

7. Levy a property road tax;

8. Order and direct Overseers specially in regard to work to be done on particular roads in their districts;

9. Cause to be erected and maintained on the highways they may designate, guide posts, properly inscribed;

10. Cause the road tax collected each year to be apportion-

ed to the road districts entitled thereto, and kept by the Treasurer in separate funds;

11. Audit and draw warrants on the funds of the respective road districts when required to pay for right of way or improvements thereon.

Road district, how defined and described. 13 ses., 166.

SEC. 871. The road districts must be carefully and distinctly defined and described; until such division is made the road districts of the various counties must continue as they are at present defined. Road districts may be altered, changed, created or modified by the Board of Commissioners, as occasion requires.

Overseers, bond, oath, etc. 13 ses., 166.

SEC. 872. Overseers of road districts receive notice of their appointment from the Clerk of the Board of Commissioners, and within ten days thereafter must give the official bond required by the Board in the order of the appointment or confirmation, and take the usual oath of office. The notice and certificate that the bond has been filed, and the oath taken and indorsed thereon, or a certified copy thereof, constitutes a commission, and authorizes the person named in and holding the same to discharge the duties of Overseer until superceded.

Duties of overseer. 13 ses., 168.

SEC. 873. Road Overseers under the direction and supervision and pursuant to orders of the Board of Commissioners appointing them must:

1. Take charge of the public highways within their respective districts;
2. Keep them clear from obstructions and in good repairs;
3. Cause banks to be graded, bridges and causeways to be made where necessary, keep the same in good repair, and renew them when destroyed;
4. Give two days notice to the inhabitants of his road district liable to do work on roads, when, where, with what implements, and under whose direction to work, and superintend the same;
5. Collect, from each inhabitant notified to work and who fails to work or prefers to pay it, the commutation fee;
6. Make semi-annual reports of all labor performed in his district, and how all road poll tax and commutation moneys were expended, to the Board of Commissioners under oath;
7. Receive and present petitions for new roads; recommend or disapprove the same, and assist in laying them out;
8. Collect all road poll taxes in the mode provided for the collection of other poll taxes, and faithfully account for and pay over the same;
9. Pay over to his successor, or into the Fund of his road district in the County Treasury, all road moneys in his hands and unexpended;
10. Receive for his services, from money coming into his hands belonging to his road district, the sum of three dollars for each day's service performed by him, to be audited and ordered paid by the Board of Commissioners.

General road fund. N. S.

SEC. 874. From the road tax collected from all sources the Board of Commissioners may annually set apart a sum not exceeding twenty-five per cent. of the aggregate for general county road purposes, from which they may direct such amounts to be paid as may be found necessary for such general road purposes in which the inhabitants of all the districts are more or less interested. The object of the appropriation must be specified in each order made therefor.

ARTICLE IV.

Highway Taxes.

SECTION
880. Who owe a road poll tax.
881. Overseers to make a list of inhabitants.
882. Levy of road and poll tax, when and how made.
883. Road poll.tax receipts.
SECTION
884. Tax list made out, tax collected and applied.
885. Overseers to add omitted and new inhabitants.
886. Annual property road tax, how levied, collected, etc.
887. Cities to constitute Road Districts.

SECTION 880. Every male inhabitant of a road district over twenty-one and under fifty years of age must perform two days' labor annually to be known as the road poll tax, upon the roads and highways of the district, under the demand and direction of the Road Overseer thereof, or pay to such Overseer a commutation fee of four dollars, or such smaller amount as may be fixed as the commutation fee by the Board of Commissioners.

Who owe a road poll tax. 13 ses., 167.

SEC. 881. Each Road Overseer must, within twenty days after being notified of his appointment and qualification, deliver to the Clerk of the Board of Commissioners, a list of the inhabitants of his district liable for the road poll tax therein. This list must be laid before the Board of Commissioners at their first meeting held thereafter.

Overseers to make list of inhabitants. N. S.

SEC. 882. The Board of Commissioners must each year, at the meeting at which they are required to levy the property tax for county purposes, estimate the probable amount of property tax for highway purposes which may be necessary for the ensuing year over and above the road poll tax, and must regulate and fix the amount of property highway tax, and levy the same thereby; and at the same time, the Board of Commissioners must fix the commutation fee for the road poll tax at an amount not exceeding four dollars.

Levy of road poll tax, when and how made. 13 ses., 167.

SEC. 883. At the time of fixing the commutation fee the Board of Commissioners must provide proper blank road poll tax receipts, to be signed by the Clerk of the Board, and must deliver to each Road Overseer a number to each, equal to the number of inhabitants of their respective district liable for road poll tax, take receipt therefor, and charge the Road Officer receiving the same therewith; but credit must be given to each Road Overseer for all unsold blank road poll tax receipts returned to the Clerk of the Board of Commissioners.

Road poll tax receipts 13 ses., 167.

SEC. 884. The Road Overseers must make out lists of the inhabitants of the road districts liable for road poll tax, and require of each the performance of the labor or the payment of the commutation fee fixed by the Board of Commissioners and apply such labor and commutation money in the opening, maintenance, and repair of the highways and adjuncts in their respective road districts.

Tax list made out Tax collected and applied. N. S.

SEC. 885. The Overseers must, from time to time, add to the lists the names of persons liable for road poll tax who were omitted or who have become inhabitants of his district since the original list was made, and enforce the road poll tax or collect the commutation fee therefor, and apply the same as hereinbefore provided.

Overseers to add omitted and new inhabitants. N. S.

Annual property road tax, how levied, etc. 13 ses., 167

SEC. 886. The annual property tax for road purposes must be levied by the Board of Commissioners at their session, when the tax is by them levied for county purposes, and must not be less than ten nor exceed sixty cents on each one hundred dollars in value of taxable property. This property road tax, when levied, must be annually assessed and collected by the same officers and in the same manner as other Territorial and county taxes are levied, assessed and collected, and turned over to the County Treasurer for the use of the road districts from which it is respectively collected.

Cities to constitute road districts. 13 ses., 173.

SEC. 887. Each incorporated city in this Territory constitutes a separate road district under this Title, and the City Council of each city, as far as relates to their city, has the powers conferred, and must perform the duties imposed upon the Board of County Commissioners of their respective counties by this chapter. Each City Council must appoint a Road Overseer, who must, within such city, have the powers conferred, and perform the duties imposed by this chapter upon Road Overseers; and the City Council may remove the Overseer or may require a bond or settlement from him at any time, and must fill any vacancy in such office; and may regulate the length, grade and size of bridges, causeways and culverts; may provide for the construction and maintenance of sewers, sidewalks, and street crossings, and the grade and construction and maintenance of streets and alleys, and has all the powers as to streets and alleys, conferred by their respective charters or acts of incorporation, and by this chapter.

ARTICLE V.

Performance of Highway Labor and Commutation.

SECTION
900. Persons must not work out of district.
901. Employers responsible for highway labor assessed to employes.
902. Penalty for loss of time or idleness; substitutes.
903. Penalty for neglect.

SECTION
904. Excuse for neglect no exemption.
905. Overseers, to whom and what to report.
906. Reports, by whom and what.
907. Report of unexpended moneys.
908. Penalty for failure to report or pay over.

Work out of district. N. S.

SECTION 900. Road Overseers must not require an individual to work out of the district in which he resides.

Employers responsible for highway labor assessed to employes. N. S.

SEC. 901. Corporations or other employers of residents in any highway district, are responsible for the road poll tax assessed against their employes, and a notice to the employer or managing agent requiring the payment of the road poll tax of the employe, charges such employer or corporation with such road poll tax.

Penalty for idleness, substitutes. 13 ses., 168.

SEC. 902. Each person appearing must actually work eight hours each day, to be credited to him by the Overseer, for every hour unnecessarily lost or idled away he must be charged two hours, to be worked out on some other day under notice from the Overseer. Any person may work by an able substitute.

Penalty for neglect 13 ses., 167.

SEC. 903. Every person receiving due notice, who does not appear and labor or commute, is delinquent.

Excuse for neglect no exemption N. S.

SEC. 904. The Overseer's acceptance of an excuse for a neglect in no case exempts the person excused from performing or commuting for the whole number of days work for which he was assessed.

Overseers, to whom and what to report. 13 ses., 170.

SEC. 905. Every Overseer must make to the Commissioners, semi-annually, a written account, under oath, containing:

1. The names of all persons assessed to work in his district;
2. The names of all who have actually worked, and the number of days;
3. The names of all who have commuted; and the amount received from them;
4. The names of all delinquents, and the amount collected from them;
5. A full return by items of the amount of labor and money expended at each separate point, and the manner in which, and the time when the same was done;
6. The number of road poll tax receipts sold, and those returned unsold;
7. An accurate account of every day he himself was employed, and the nature and items of the service rendered.

Reports, by whom. N. S.

SEC. 906. The Commissioners may require special reports from Road Overseers when deemed proper.

Unexpended moneys, report of. 13 ses., 170.

SEC. 907. The Road Overseers must accompany their reports with all unexpended moneys remaining in their hands at the date of the report, and a statement of all moneys in the County Treasury to the credit of their road districts.

Penalty for failure to pay over or report.

SEC. 908. A failure to make a report as required, or to pay over, on the order of the Commissioners, any moneys in his hands, subjects the Overseer to a penalty of twenty-five dollars, to be recovered in an action on his bond, together with any balance due from him; suit therefor may be instituted by the District Attorney, under order of the Board of Commissioners.

ARTICLE VI.

Laying Out, Altering, and Discontinuing Roads.

SECTION

920. Who may apply for change.
921. What the petition must show.
922. Petitioners to give bonds for costs.
923. Commissioners to appoint Viewers.
924. Viewers, their duties.
925. Report of Viewers.
926. Report not to be approved, when.
927. Viewers and Surveyors, how paid, and on what certificate.
928. Proceedings of Board in hearing report.

SECTION

929. Effect of, and proceedings on approval of Viewers' report.
930. Proceedings to procure right of way.
931. Awards, how and by whom paid.
932. Width of highways.
933. Private roads, how opened.
934. Conveyances or decrees of condemnation of lands to be recorded.
935. Roads crossing railroads, canals or ditches.
936. Fences to be removed, how.
937. Changing direction of road.

Who may apply for change. 13 ses., 162.

SECTION 920. Any ten inhabitants of a road district taxable therein for road purposes, may petition in writing the Board of Commissioners to alter or discontinue any road or to lay out a new road therein.

What the petition must show. 13 ses., 162.

SEC. 921. The petition must set forth and describe particularly the road to be abandoned, discontinued, altered, or constructed, and the general route thereof, over what lands, and who the owners thereof are, whether the owners consent thereto, and if not, the probable cost of the right of way, the necessity for and the advantages of the proposed change.

Petitioners to give bonds for costs. 13 ses., 165.

SEC. 922. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the Commissioners, in double the amount of the probable cost of the viewing and laying out or altering of any road, conditioned that the bondsmen will pay all the costs of viewing and surveying in case the prayer is not granted, and the road finally not opened.

Commissioners to appoint viewers. 13 ses., 163.

SEC. 923. Upon filing such petition and bond, the Board of Commissioners must appoint three Viewers one of whom must be a surveyor, to view and survey any proposed alteration of an old or opening of a new road, to be made in accordance with the description in the petition, and submit to the Board an estimate of the cost of the change, alteration, or opening, including the purchase of the right of way and their views of the necessity thereof.

Viewers, their duties. 13 ses., 163.

SEC. 924. The Road Viewers must be disinterested citizens of the county, but not petitioners; they must be sworn to discharge their duties faithfully; must view and lay out the proposed alteration or new road over the most practicable route; notify the owners of the land over which it passes of the proposed route; ascertain whether the owners consent thereto, and the amount, if any, they claim or demand for the right of way over the same; estimate the actual damage to any land over which it passes, and the cost of any bridges or grading necessary; the necessity for and public convenience to be subserved by the road, and whether the opening thereof or change therein proposed should be had.

Report of viewers 13 ses., 166

SEC. 925. When the view and survey of the proposed alteration or new road is completed, the Viewers must report to the Board of Commissioners:

1. The course, termini, length, and cost of construction of the proposed road;

13 ses., 163.

2. The estimate of damage to the owner of any land over which it is proposed to run the road;

3. The names of land owners who consent to give the right of way and their written consent thereto;

4. The names of land owners who do not consent, and the amount of damage claimed by each;

5. Such other facts bearing upon the subject, of importance to be known by the Board of Commissioners.

Report not to be approved, when N. S.

SEC. 926. No report of Viewers must by the Board of Commissioners be approved, which, without the consent of the owner and occupant, runs the road:

1. Through an orchard of four years' growth;

2. Through a garden or yard four years cultivated;

3. Through buildings or fixtures, or erections for the purposes of residence, trade, or manufacture;

4. Through inclosures necessary for the use or enjoyment of buildings, fixtures or erections; unless the Board of Commissioners are satisfied, from personal examination and observation, or from the sworn statement of at least twelve respectable residents of the road district, that the opening of such road through such premises is an absolute necessity, a great public benefit, or a great convenience to a moiety of the inhabitants of the district.

Viewers and surveyors, pay of 13 ses., 171.

SEC. 927. The Viewers must be paid three dollars each per day for their services out of the Road Fund of the district through which the road passes, and the Surveyor for services in running out and mapping the road and making the plat and field notes, which must be filed when required before he receives his compensation, five dollars per day.

SEC. 928. The Board of Commissioners on the coming in of the report, must fix a day for hearing the same, must notify the owners of land not consenting to give the right of way of the hearing, by having written notice served on them personally, or on the occupant, or agent of the owner, or if neither, by posting notice at the most conspicuous place on the land, or left at the owner's, agent's, or occupant's residence ten days prior to the day fixed for the hearing; and must, on the day fixed, or to which it may be postponed or adjourned, hear evidence and proof from all parties interested for and against the proposed alteration or new road, ascertain, and by order declare, the amount of damage awarded to each non-consenting land owner, and declare the report of the Viewers to be approved or rejected. If the report is rejected the road must not be altered or opened.

Proceedings of boards in hearing report.
13 ses., 163-64.

SEC. 929. If the Board approve the report, and there are no non-consenting land owners; the road must, by order, be declared a public highway, and the Road Overseer ordered to open the same to the public. If there are non-consenting land owners, the Board must appropriate from the Road Fund of the district, and cause the Road Overseer to tender to such non-consenting land owners the award for damages made by the Board. If the awards are all accepted the road must be declared a public highway and be opened as before provided.

Effect of, and proceedings on approval of viewers' report.
13 ses., 164.

SEC. 930. If any award of damages is rejected by the landowners, the Board must, by order, direct proceedings to procure the right of way to be instituted by the District Attorney of the county, under and as provided in the Code of Civil Procedure, against all non-accepting land owners, and when thereunder the right of way is procured the road must be declared a public highway and opened as hereinbefore provided.

Proceedings to procure right of way.
13 ses., 164.

SEC. 931. All awards by agreement, ascertainment by the Board, or by the proper Court, must be paid out of the Road Fund of the district on the order of the Board of Commissioners. If the road lies in more than one district, the Commissioners must proportionately divide the awards and other costs between them.

Awards, how and by whom paid.
13 ses., 164.

SEC. 932. All highways, except alleys and bridges, must be at least fifty feet wide except those now existing of a less width.

Width of highways.
13 ses., 165.

SEC. 933. Private or by-roads may be opened for the convenience of one or more residents of any road district in the same manner as public roads are opened, whenever the Board of Commissioners may for like cause order the same to be viewed and opened, the person for whose benefit the same is required paying the damages awarded to land owners, and keeping the same in repair.

Private roads, how opened.
13 ses., 165-66.

SEC. 934. In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned and paid for, either an instrument in writing conveying the right of way and incidents thereto, signed and acknowledged by the party making it, or a certified copy of the decree of the Court condemning the same, must be made and filed and recorded in the office of the Recorder of the

Conveyances or decrees of condemnation of lands to be recorded.
N. S.

county in which the land so conveyed or condemned must be particularly described.

Roads crossing railroads, canals or ditches. N. S.

SEC. 935. Whenever highways are laid out to cross railroads, canals or ditches on public lands, the owners or corporations using the same must, at their own expense, so prepare their roads, canals or ditches, that the public highway may cross the same without danger or delay; and when the right of way for a public highway is obtained through the judgment of any Court over any railroad, canal, or ditch, no damages must be awarded for the simple right to cross the same.

Fence to be removed, how. N S.

SEC. 936. When the alternation of an old or the opening of a new road makes it necessary to remove fences on land given, purchased, or condemned by order of a Court for road or highway purposes, notice to remove the fences must be given by the Road Overseer to the owner, his occupant, or agent, or by posting the same on the fence, and if the same is not done within ten days thereafter, or commenced and prosecuted as speedily as possible, the Road Overseer may cause it to be carefully removed at the expense of the owner, and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment.

Changing the direction of roads. 13 ses., 165.

SEC. 937. If any person through whose lands any public highway is established, is desirous of turning such road through any other part of his lands, such person may, by petition, apply to the County Commissioners, to permit him to turn such road through another part of his land, without materially increasing the distance to the injury of the public; and on receipt of such petition, accompanied by a sufficient bond to pay the costs and expense to be incurred thereby, the Commissioners may appoint three disinterested viewers and surveyor, if they deem it necessary, who must view the ground over which the road is proposed to be turned, and ascertain the distance such road will be increased by the proposed alteration, and a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alterations; and if the viewers report to the Commissioners that the prayer of the petition is reasonable, the Commissioners, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the convenience of travelers, may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new; and the person petitioning for the alteration must pay all the costs and expense of the view and survey, if ordered.

ARTICLE VII.

Erection and Maintenance of Bridges.

SECTION
945. Bridges, how maintained, and by whom.
946. When aid may be given by county for bridges.
947. Construction and repair of bridges to be let out by contract.
948. When one overseer fails to aid, who may repair bridge.

SECTION
949. Overseers failing, how bridge repaired.
950. Construction of bridge petitioned for and notice.
951. If found necessary, the bridge to be built.
952. Report of officers to embrace bridges.

Bridges, how maintained and by whom N. S

SECTION 945. All public bridges not otherwise specially provided for are maintained by the road district in which they are situate, the districts which they unite, and the county at large, in the same manner as highways, and under the management and control of the Road Overseer and Board of Commissioners, the expense of constructing, maintaining, and repairing the same being primarily payable out of the Road Fund of the district in the hands of the Road Overseer or County Treasurer, and from road poll taxes.

When aid may be given by county, for bridge. N. S.

SEC. 946. Whenever it appears to the Board of Commissioners that any road district is or would be unreasonably burdened by the expense of constructing or maintenance and repair of any bridge, they may in their discretion cause a portion of the aggregate cost or expense to be paid out of the General Road Fund of the county, or out of the General County Fund, or both; or they may levy a special bridge tax therefor, not exceeding one-fourth of one per cent. on the taxable property of the county annually, till the amount appropriated in aid is raised and paid.

Construction and repair of bridges to be let out by contract. N. S.

SEC. 947. No bridge, the cost of the construction or repair of which will exceed the sum of one hundred dollars, must be constructed or repaired except on order of the Board of Commissioners. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder, after reasonable notice given by the Board of Commissioners, through the Road Overseer, by publication at least two weeks in a county newspaper; and if none, then by three posted notices, one at the Court House, one at the point to be bridged, and one at some other neighboring public place; the bids to be sealed, opened, and the contract awarded at the time specified in the notice. The contract and bond to perform it must be entered into with the approval of the Board of Commissioners.

When one overseer fails to aid, who may repair bridge. N. S.

SEC. 948. If the Road Overseer of one road district, after five days notice from the Overseer of an adjoining district to aid in the repair of a bridge in which each are interested, fails so to aid, the one giving notice may make the necessary repairs, and must be allowed a pro rata compensation therefor by the Board of Commissioners out of the Road Fund of the defaulting district.

Overseer failing, how bridge repaired. N. S.

SEC. 949. If the Overseer of any road district chargeable with the repair of a bridge fails to make the needed repairs after being informed that a bridge is impassable or unsafe, and is requested to make the same by two or more tax payers of the district in which it is situate, or the two districts which it unites, the tax payers may represent the facts to the Board of Commissioners, who, upon being satisfied that the bridge is unsafe, must cause the same to be repaired, and must pay therefor from the funds of the district chargeable therewith.

Construction of bridge petitioned for and notice. N. S.

SEC. 950. When a bridge, the cost of which will exceed one hundred dollars, is necessary, any five or more tax payers of the road districts interested therein may petition the Board of Commissioners for the erection of such needed bridge. The Board must thereupon advertise such application, giving the location and other facts, for two weeks in a newspaper printed in the county, if none, then by posters—one at the proposed location, one at the Court House, and one at some other public place in the county, and notify the

Overseer to attend at a certain time and place to hear the application.

If found necessary, bridge to be built
N. S.

SEC. 951. On the day fixed to hear the application, proof of the notice given being made satisfactory, the Board must hear the petition, examine witnesses, and determine whether or not a bridge is necessary as petitioned for; if found to be so, the Board must determine the character of bridge to be constructed, prepare plans and specifications, invite bids, let the contract, and have the same erected, and provide for the payment therefor as herein provided.

Report of officers to embrace bridges.
N. S.

SEC. 952. The Road Overseers must in their official reports give a full account of all bridges of which they have in whole or in part the charge and maintenance, those construted or repaired, and the cost thereof, the amounts expended thereon, from what source derived, and the present and prospective condition thereof.

ARTICLE VIII.

Obstructions and Injuries to Highways.

SECTION

960. Removal of encroachments.
961. Notice to remove encroachment.
962. Penalty for neglect.
963. If encroachment denied, action for nuisance to be brought.
964. If encroachment not denied, how removed.
965. No gate allowed, except where.
966. Penalty for leaving open gate or riding off the road.
967. Penalty for obstruction or injury.
968. Running water across highway.
969. Neglect of owner.
970. Penalty for injuring guide post.
971. Removal of fallen trees.
972. Unauthorized felling of trees.
973. Notice on bridges, and penalty for disregarding.
974. Destroying shade or ornamental trees.
975. Application of penalties.
976. Road laws now in force not affected by code.

Removal of encroachments.
N. S.

SECTION 960. If any highway duly laid out or erected is encroached upon by fences, buildings, or otherwise, the Road Overseer of the district may, orally or in writing, require the encroachment to be removed from the highway.

Notice to remove encroachments.
N. S

SEC. 961. Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he reside in the county; if not, it must be posted on the encroachment, specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same within ten days.

Penalty for neglect.
N. S.

SEC. 962. If the encroachment is not removed or commenced to be removed and diligently prosecuted prior to the expiration of the ten days from the service or posting the notice, the one who caused or owns or controls the encroachment forfeits ten dollars for each day the same continues unmoved. If the encroachment is such as to effectually obstruct and prevent the use of the road for vehicles, the Overseer must forthwith remove the same.

If encroachment denied action for nuisance to be brought.
N. S.

SEC. 963. If the encroachment is denied, and the owner, occupant, or person controlling the matter or thing charged with being an encroachment, refuses to remove or to permit the removal thereof, the Road Overseer must commence in the proper Court an action to abate the same as a nuisance; and if he recovers judgment, he may, in addition to having the same abated, recover ten dollars for every day such nuisance remained after notice, as also his costs in such action.

Encroachment not denied, how removed.
N. S.

SEC. 964. If the encroachment is not denied, but is not removed for five days after the notice is complete, the Road

Overseer may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, as also for each day the same remained after notice was complete, the sum of ten dollars in an action for that purpose.

No gate allowed except where. N. S.

SEC. 965. No gates must be allowed on any public highway duly laid out, except on highways running through land subject to overflow to such extent as to remove the fences. When so allowed they must be erected and maintained at the expense of the owner or occupant at whose request or for whose benefit they were erected. If such expense is not paid, the gate must be removed as an obstruction.

Penalty for leaving open gate, or riding off road. N. S.

SEC. 966. Any one who leaves open such gate, or willfully and unnecessarily rides over ground adjoining the road on which the gate is erected, forfeits to the injured party treble damages.

Penalty for obstruction or injury. N. S.

SEC. 967. Whoever obstructs or injures any highway, or obstructs or diverts any water course thereon, is liable to a penalty of five dollars for each day such obstruction or injury remains, and must be punished as provided in the Penal Code.

Running water across highway. 13 ses., 172-73.

SEC. 968. Any person desiring and intending to run water across any public road, street, or highway, in this Territory, must first construct a ditch or ditches of sufficient size to carry all of such water, and must build a good, substantial bridge, with good, easy grades leading on and off the same, over such ditch or ditches, not less than twenty feet wide, of good hewn or sawed timber or lumber not less than three inches thick, laid on good substantial timbers not less than six inches square, and they and their successors must keep all such bridges and ditches in good repair, so long as such ditches are maintained. *Provided,* That where the quantity of water of any ditch is such that a box or culvert will carry the same, said water may be conducted across any road, street, or highway, by means of such box or culvert which must be adapted to the surface of the road, street, or highway, and be built of a length of not less than twenty feet, and in a manner so substantial as to bear and admit of uninterrupted travel.

Neglect of owner; overseer to build culvert. 13 ses., 173.

SEC. 969. If any person owning or having ditches across any public road, street, or highway, fails or neglects to build bridges or culverts over the same as required by the last section, or to keep the same or their ditches, on any public road, street, or highway, in good repair, it is the duty of the Overseer of the district to build or repair the same at the expense of such person, and the cost thereof is a lien upon the land and premises of such ditch owner or owners, and may be sued for and collected, by and in the name of such Overseer in any Court of competent jurisdiction.

Penalty for injury. Guide post. N. S.

SEC. 970. Whoever removes or injures any guide post, or any inscription on such, erected on any highway, is liable to a penalty of ten dollars for every such offense, and punishable as provided in the Penal Code.

Removal of fallen trees. N. S.

SEC. 971. Any person may notify the occupant or owner of any land from which a tree or other obstruction has fallen upon any highway to remove such tree or obstruction forthwith. If it is not so removed the owner or occupant is liable to a penalty of one dollar for every day thereafter till it is removed, and the cost of removal.

Felling of trees.
13 ses., 171.

SEC. 972. Whoever cuts down a tree so that it falls into any highway, must forthwith remove the same, and is liable to a penalty of five dollars for every day the same remains in such highway.

Notice on bridges, penalty for disregarding.
N. S.

SEC. 973. The Road Overseers may put up on bridges under their charge notices that there is "Five dollars fine for riding or driving on this bridge faster than a walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to five dollars for each offense.

Destroying shade trees
N. S.

SEC. 974. Whoever digs up, cuts down, or otherwise injures or destroys any shade or ornamental tree planted and standing on any highway, forfeits twenty-five dollars for each such tree.

Application of penalties.
N. S.

SEC. 975. All penalties or forfeitures given in this Chapter, and not otherwise provided for, must be recovered by the Road Overseers of the respective road districts, and be applied on the highways in which they are collected.

Road laws now in force not affected by this code.
N. S.

SEC. 976. Nothing in this Chapter affects the provisions of any statute in relation to roads and highways now in force and made applicable to one or more counties by name; but whenever such statute is repealed, then the provisions of this chapter are applicable to the county named in the statute repealed.

ARTICLE IX.

Leasing Roads.

SECTION
986. Lease of roads, length of lease.
987. Order to lease.
988. Bids. Sureties.
989. Contract for lease. Lessee. Sureties.
990. Sureties in undertaking.
991. Roads leased, cleaned, bridged and repaired.
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993. Rate of toll. Avoid paying.
SECTION
994. County roads.
995. Toll, who shall not pay.
996. Forfeiture of lease.
997. Toll, charge of.
998. Gates, number of. Construction. Bids shall specify.
999. Bids, opening of.
1000. Conditions of lease. Width of road Bridges.
1001. Road labor.

Lease of roads, length of lease.
12 ses., 50
13 ses., 161.

SECTION 986. Whenever a county road in any county in this Territory is so located that there is little or no local labor along the line or in the vicinity of said road, the Board of County Commissioners of the county where such road or any portion of the same is, or may hereafter be located, is authorized to lease such road, or any portion of the same, to any person or corporation to open, improve, and keep the same in repair for a period not exceeding five years, with the right in consideration thereof to collect and receive tolls for travel thereon in the manner provided in this article.

Order to lease
12 ses., 51.

Publication of notice

SEC. 987. Whenever it becomes expedient to lease a public road, or any specified section thereof, the County Commissioners must make an order to that effect, specifying therein the termini thereof, and directing the Clerk of the Board of County Commissioners to cause the same to be published in some newspaper published in the county if there be one, or if there be no newspaper published in the county, then in a newspaper of general circulation therein, for a period not less than four weeks, and in like manner to give notice therewith that sealed bids will be received at such Clerk's office until a particular hour of a certain day thereafter, and not more than ten days after the expiration of the publication of such order and notice, for the leasing of such road.

Bids, sureties. 12 ses., 51.

SEC. 988. No bids must be considered unless accompanied by an undertaking, executed by two or more sureties in the sum of two thousand dollars, to be void upon the condition that the bidder, if the lease is awarded to him, will, within ten days thereafter, enter into the contract for keeping the road, and give the undertaking to secure the performance thereof, as hereinafter provided.

Contract for lease.

Lessee. 12 ses., 51. Sureties.

SEC. 989. The contract for the lease must be subscribed by the lessee and approved by the County Commissioners and filed with the Clerk of the Board. At the time of filing the contract, the lessee must give an undertaking to the county in a sum to be fixed by the County Commissioners, not less than two thousand and not more than ten thousand dollars, with two or more sufficient sureties, to be void upon the condition that the lessee will faithfully perform the contract in relation to such road, and comply with the provisions of this article.

Sureties in undertaking. 12 ses., 51.

SEC. 990. The sureties, in the undertaking mentioned in the last section, must have the qualifications of bail upon arrest in civil actions, and must justify in like manner before the County Commissioners or the Clerk thereof.

Roads leased must be cleared, bridged, etc. 12 ses., 51.

SEC. 991. The road leased under this article must be cleared of standing timber, and have a track for traveling of the width, and be kept in the condition, and the streams or other waters on the line thereof, must be bridged, or ferries established thereon and must be made of such grade and of such materials as the contract shall specify.

Toll collected. 12 ses., 52.

SEC. 992. No toll must be collected for travel on such roads except at a gate, nor unless a sign-board be posted at such gate in full view of the travel on the road, with the rates of toll plainly printed or painted thereon. The lease must specify the number of gates that may be placed on the road, and the location thereof, and thereafter the number of such gates must not be increased; but the County Commissioners, upon the application of the lessee, may, at any time, for good reasons, authorize the lessee to change the location of such gates, or any of them.

Rates of toll. Toll, avoid paying. 12 ses., 52.

SEC. 993. The rates of toll that the lessee may collect and receive must be specified in the lease, and none other must be charged; and any person who passes through a gate on such road without paying the toll legally chargeable thereat, or when traveling on such road goes around such gate, with intent to avoid the payment of such toll, is liable to the lessee for three times the amount of such toll; and any lessee of such road, who, by himself, his agents or servants, collects or receives of any persons illegal toll for traveling on such road, is liable to such person for three times the amount of such toll.

County road. 12 ses., 52.

SEC. 994. The road leased as provided in this article, is nevertheless to be deemed a county road, subject to the provisions of the lease.

Toll, who shall not pay. 12 ses., 52.

SEC. 995. No footman can be required to pay toll for traveling on such road, nor any person while traveling from one portion of his or his employer's farm to another, with or without any stock or vehicle, or in going to or returning from church, a funeral or an election.

Forfeiture of lease. 12 ses., 52.

SEC. 996. The County Commissioners have authority, upon the application of the lessee, to cancel or modify the lease upon such terms as may be equitable and just; and the proper District Attorney may maintain an action against the lessee in the name of the county to have such lease declared forfeited whenever the lessee fails or neglects to comply with the provisions thereof, and of this article.

Tolls charged on. 12 ses., 52.

SEC. 997. Tolls are chargeable by the lessee upon the following items, or classes of persons, or property only:

1. Sheep and hogs;
2. Loose horses, mules, asses and cattle;
3. Man and riding animals and pack animals loaded;
4. Vehicles loaded or unloaded and drawn by one or more animals.

Number of gates. 12 ses., 53.

SEC. 998. The order of the Commissioners must specify the number of gates to be placed on the road, the grade of the road, the materials for the construction thereof, and the period for which the same is to be let. The bid must specify the rates of toll which the bidder is willing to accept for putting and maintaining the road in the condition according to the specifications in the order.

Bid must specify.

Opening of bids. 12 ses., 53.

SEC. 999. Upon opening the bids, the lease must be awarded to the lowest bidder; but the County Commissioners may, and it is their duty to reject, any or all bids when there appears sufficient cause therefor, and in such case they may subsequently re-advertise and let the same.

Conditions of lease. 12 ses., 53.

SEC. 1000. The Commissioners must insert in every contract with a lessee of a road leased under this article that the same must be cleared of standing timber for thirty feet in width of said road, and have a track in the centre not less than sixteen feet wide, furnished and kept in good traveling condition, except where the cutting on said road is six feet or more deep on either side, where said track need not be more than ten feet wide, with turnouts of sixteen feet in width every quarter of a mile of such narrow track and of sufficient length to enable the teams traveling said road to pass each other conveniently, and that all streams and other waters on the line of such road be safely and securely bridged; they may also insert therein such condition for keeping the road open during the winter season, as they may deem reasonable or expedient.

Width of road.

Bridges.

Road labor. 12 ses., 53.

SEC. 1001. The granting of any lease or leases under this article must not release any person liable to road labor from the performance thereof on the county roads not leased, or otherwise discharging the same in money in lieu of such labor.

CHAPTER III.

TOLL ROADS.

ARTICLE I.

Construction of Toll Roads.

SECTION
1020. Notice of and application to construct the road.
1021. Hearing the application.
1022. Action of Commissioners.
1023. Commissioners, how appointed for other counties and by corporation.
1024. Laying out the road.
1025. Compensation of Commissioners, map and report.
1026. Branches and Extensions.
1027. Acquiring lands by grant.
1028. Appropriation of damages for highways taken.
1029. Application, when unnecessary.
1030. Orchards and gardens.
1031. Bridging streams.
SECTION
1032. One road corporation using the road-bed of another.
1033. How to be constructed.
1034. May relay with what.
1035. Guide posts.
1036. Inspection, certificate and completion.
1037. Erection of gates, etc.
1038. Rates of toll fixed, how, by whom.
1039. Applicants to give bond.
1040. Abandonment of road, and what becomes of it.
1041. County may purchase road, how.
1042. How the appraisement and award is made, and its effect.

SECTION 1020. If all land necessary for the road-bed and other purposes are not otherwise acquired as hereinafter provided, the company proposing to construct a toll road through any part of a county must publish a notice in some newspaper published therein, and if none, then in the newspaper nearest thereto, once in each week for six successive weeks, specifying the character of the road, the termini, and each town, city, or village through which it is proposed to construct it, and the time when the application hereinafter required will be made. After such notice is complete, on the day specified therein, application must be made to the Board of Commissioners of the county for authority to take the necessary land and to construct the road described in the notice.

Notice of and application to construct the road. Comp. laws, 867.

SEC. 1021. On the hearing all residents of the county and others interested may appear and be heard. The Board may take testimony, or authorize it to be taken by any officer of the county, and adjourn the hearing from time to time.

Hearing the application.

SEC. 1022. If it appears to the Board of Commissioners that the public interests will be promoted thereby, a majority of all the members thereof may grant the application, and by order authorize the company to take the real property necessary, and appoint two Road Commissioners to lay out the road, who are disinterested either in the company or in any land sought to be taken or adjoining thereto. A copy of this order must be recorded in the County Recorder's office before action under it is had.

Actions of commissioners. Comp. laws, 864.

SEC. 1023. If the road extends into more than one county, the application must specify their names, and the Board of Commissioners of each of such counties must appoint Road Commissioners to act in their respective counties with the Commissioner and Surveyor of the company. The company must appoint one Commissioner of like qualification as those appointed by the Board of Commissioners, and furnish a Surveyor to accompany and act with them.

Commissioners, how appointed, etc.

SEC. 1024. The Road Commissioners must take the oath of office, and view and lay out the road as in their judgment will best promote the public interest. They must hear all

Laying out the road.

persons interested, and may take testimony; they may determine the breadth of the way, not exceeding one hundred feet, except where the company acquire a greater breadth by grant. They must make, sign, and certify an accurate survey and description of the route and of the land necesary for the road, buildings, and gates in each county, and record the same in the office of the County Recorder thereof. When the breadth of the road is not fixed by the Road Commissioners, it may be fixed by the Board Commissioners of the county.

Compensation of commissioners, map and report.

SEC. 1025. The company must pay to each Road Commissioner his expenses and four dollars a day for his services; cause their Surveyor to make the map of the proposed road, which, when approved and certified by the Road Commissioners, must be filed with the report in the office of the Clerk of the Board of County Commissioners and recorded.

Branches and extensions.

SEC. 1026. The Directors of any such company may, with the written consent of the holders of two-thirds of the stock, proceed in the manner prescribed by the preceding six sections to construct branches to their road, or to extend it or alter any part of its route or branches.

Acquiring lands by grant.

SEC. 1027. Lands necessary for the purposes of the road or appurtenances may be acquired by purchase or condemnation. Lands within any highway may be granted by the Board of Commissioners or city authorities on such terms and for such sums as may be agreed upon.

Appropriation of damages for highways taken

SEC. 1028. When the road company desires the exclusive use of lands forming part of a highway, and such use is granted by the County Commissioners, the damages received therefor are to be paid to the Road Fund of the Road District in which the same is situated.

Application, when unnecessary.

SEC. 1029. When the Company has obtained all the lands necessary in any county, by purchase or agreement, the road may be constructed without making the application to the Board of Commissioners hereinbefore provided for; but before proceeding to do so an accurate survey of such part of the road must be made by a practical surveyor, signed and sworn to by the President and Secretary, and recorded in the County Recorder's office; and if the road extends into another county, authority to construct the road there must first be obtained.

Orchards and gardens.

SEC. 1030. No such road must be laid out through any orchard of four years' growth, to the injury of the fruit trees, or any garden of four years' cultivation, or any dwelling house or building connected with a dwelling house or any yard or inclosure necessary thereto, without the consent of the owner.

Bridging streams.

SEC. 1031. The road company may bridge any stream or river on the route of their road, when not within the limits prescribed by law for the erection and maintenance of any other bridge and in bridging streams used for rafting lumber, the bridge must be so constructed as not to prevent or endanger the passage of any raft forty feet in width.

Road corporation using roadbed of another.

SEC. 1032. No plank road company must construct its road on the road of another company, except in case of crossings, without consent of the latter.

How to be constructed

SEC. 1033. Every such road must be laid out at least fifty feet wide. The track of plank roads must be constructed eighteen feet wide, of timber, plank or other hard material. The track of turnpikes must be bedded with stone, gravel, or such other hard material found on the line thereof, to the width of eighteen feet, and faced with broken stone or gravel. The common wagon road must be graded at least twelve feet in width, and so constructed with necessary turnouts as to permit vehicles to pass each other conveniently. All the roads must be ditched on the sides when practicable, and have proper and necessary sewerage, and be so constructed that vehicles may pass on and off the track at all intersections of roads.

May relay, with what.

SEC. 1034. Every company that has once laid their road with plank may relay it or any part of it with broken stone, gravel, or other hard material whereby they keep a good, substantial road.

Guide posts.

SEC. 1035. A guide post must be erected at every place where the road is intersected by a public road, with an inscription showing the name of the place to which such intersecting road leads, in the direction to which the name on the guide post points.

Inspection certificate, and completion.

SEC. 1036. When the road or three consecutive miles thereof, is completed, the Road Overseer or other person thereto specially appointed by the Board of Commissioners of the county, must inspect the road when requested, and if satisfied that the road conforms to the requirements of the law, must certify to the facts and file the certificate in the office of the County Recorder, for such service four dollars per day must be by the company paid to the Inspector or Overseer. When only three miles of any plank road are completed, if it is not the entire road, tolls must not be collected thereon for more than one year, unless the road or five consecutive miles are completed within the year.

Erection of gates, etc.

SEC. 1037. When the certificate of completion is filed, toll gates may be erected and tolls collected. No toll gate, toll house, or other building must be put up within ten rods of the front of any dwelling house, barn or outhouse, without written consent of the owner thereof.

Rates of toll fixed, how, by whom. Comp. laws, 868.

SEC. 1038. The Board of County Commissioners must fix and regulate the rates of toll for all franchises granted under the provisions of this chapter within the limits of their respective counties, having due regard to the cost of construction, magnitude of structure and expenses incident thereto, and in keeping the same in good repair. The Board of Commissioners must also tax such sum as may appear reasonable, not less than twenty-five dollars nor more than two hundred dollars per annum, for each license granted; and the person or parties to whom such license is granted, must pay to the County Treasurer the tax for one year in advance, taking his receipt therefor, and upon the production of such receipt the Clerk of the Board of Commissioners must issue such license, with a statement of the rates of toll as fixed, under seal of the Board of Commissioners.

Applicants to give bond. Comp. laws, 868.

SEC. 1039. Every company applying for a license to keep a toll road, must, before the same is issued, enter into a bond with one or more sureties, to be approved by the Clerk of the Board of Commissioners in any sum not less than one thousand, nor more than ten thousand dollars, conditioned that such company will keep said road in all respects according to law; and if default at any time be made in the condition of such bond, damages not exceeding the penalty may be recovered by any person aggrieved, before any court having competent jurisdiction.

Abandonment of road and what becomes of it.

SEC. 1040. Whenever the holders of two-thirds of the stock consent, the Directors of any company may abandon the whole or any part of their road at either or both ends, by written surrender thereof, attested by their seal, and acknowledged by the President and Secretary as a deed or grant is acknowledged, and recorded in the Recorder's office of each county where the surrendered road lies; thereafter the surrendered road belongs to the road districts in which it lies, but the company may continue to take toll on any three consectutive miles in length not so surrendered.

County may purchase road, how.

SEC. 1041. At any time within five years from filing the certificate of completion of any road constructed under the provisions of this chapter, the county within which the road or any part thereof is located, may purchase the same at a fair cash valuation, to be fixed by seven commissioners, all disinterested persons, three to be appointed by the Board of Commissioners of the county, three by the owner of the road, and the seventh by the Probate Judge, who must estimate the fair cash value of the road and make report thereof under oath to the Board of Commissioners. If within three months after filing the report, the appraised value thereof is tendered on behalf of the county to the owner of the road or his authorized managing agent, the right of the owner to take tolls on the road is terminated, and the road becomes the property of the county.

How appraisement and award is made, effect of.

SEC. 1042. A majority of the Commissioners mentioned in the preceding section constitutes a quorum, and the concurrence of a majority in making the estimate and award is binding upon the road owner if approved by the Board of Commissioners. The Commissioners must make their report within thirty days after their appointment, and if approved the tender of the amount of the appraisement and award must be made by the County Treasurer; whether the owner conveys the road to the county or not, the report and tender operate as a conveyance to the county of the road and all its incidents and appurtenances.

ARTICLE II.

Use of Toll Roads.

SECTION 1050. Persons exempt from tolls.

Persons exempt from tolls.

SECTION 1050. The following persons, and none other, are exempt from payment of toll on wagon, turnpike, or plank roads:

1. Persons going to or from any funeral, and all funeral processions;
2. Troops in actual service of the Territory, or of the United States;
3. Persons going to or from the Court House in obedience to a subpœna in a criminal action;
4. Persons living within a mile of any gate by the most usually traveled road may pass it at one-half toll, when not engaged in the transportation of others or the property of others;

5. Farmers living on their farms within one mile of any gate by the most usually traveled road may pass free when going to or from their work on such farms;

6. School children attending school within three miles of their parents or boarding houses.

ARTICLE III.

Inspection and Repairs.

SECTION
1055. Inspection of roads, by whom, and how repairs to be made.
1056. Closing gates and penalty.
1057. Defects in road, to be reported to whom.

SECTION
1058. Enforcing obedience to notice and requirement.
1059. Fees of Overseer, what and how paid.

Inspection of roads, by whom, and how repairs to be made.

SECTION 1055. Every Road Overseer of the district to whom complaint in writing is made that any part of a wagon, turnpike, or plank toll road in his county or district, or any part of such road, the gate nearest to which is in his county or district is out of repair, must examine it without delay and give notice of the defect, particularly describing the same, to the person attending the gate nearest thereto; if the necessary repair is not made or defect remedied within three days after such notice is given, the Road Overseer may order such gate to be thrown open.

Closing gates, penalty.

SEC. 1056. A gate so ordered to be thrown open must not be shut nor any toll collected thereat until the Road Overseer ordering it shut grants a certificate that the road is in sufficient repair, and that the gate ought to be closed. The company and their gatekeeper or other employe, violating or permitting the violation of this section, or the order made under the preceding section, are each liable in a penalty of twenty-five dollars for each offense, to be recovered by the party aggrieved.

Defects in road, to be reported to whom.

SEC. 1057. Every Road Overseer who discovers a defect in any toll road in his county or district, or a gate placed in a situation contrary to law must give written notice thereof to one or more of the Directors or managing agents of the company, requiring the defective road to be repaired or the gate to be removed, within a specified time; and may order that in the meantime such gates as he specifies be thrown open.

Enforcing obedience to, notice and requirements.

SEC. 1058. If the notice and requirements are not obeyed, the Road Overseer must make immediate complaint to the District Attorney of the county, who must prosecute the company therefor in the name of the Territory for so suffering the road to be out of repair, or of having placed any gate in a situation contrary to the law; and if convicted thereof, the company must be fined not exceeding two hundred and fifty dollars.

Fees of overseer, what and how paid.

SEC. 1059. The Road Overseer complaining to the District Attorney or who makes inspection and discovers defects in the road is entitled to three dollars for each day's services in inspecting the road or necessarily expended in prosecuting the action therefor, to be paid in case of conviction, as costs. When no action is had, but repairs are made, or gate removed, on the inspection and requirement of the Road Overseer, the toll gatherer nearest the road so out of repair, or the gate to be moved, must pay the fees hereinbefore specified out of the tolls collected; if he refuse to pay the same, the same may be recovered by action with costs.

CHAPTER IV.

PUBLIC FERRIES AND TOLL BRIDGES.

ARTICLE I.

General Provisions.

SECTION
1070. What Board to grant authority to construct.
1071. Notice must be proved.
1072. Duty of Board of Commissioners granting authority.
1073. License tax and rate of tolls, how fixed.
1074. Report of bridge or ferry owner or keeper.
1075. Injury of the Board of Commissioners fixing tolls.
1076. When to direct license to issue
SECTION
1077. Bond, conditions and execution.
1078. When bridge unites two counties.
1079. When Board is divided. Probate Judge to act.
1080. Toll bridge or ferry within one mile of another, when.
1081. How lands are acquired for use of bridge or ferry.
1082. Must post rates of toll.
1083. Revenue derived from license, how disposed of.
1084. To keep banks in repair.

Board to grant authority to construct, what. Comp. laws, 863.

SECTION 1070. When authority to construct a toll bridge or to erect and keep a ferry over waters dividing two counties is desired, application must be made to the Board of Commissioners of that county situated on the right bank descending such river, creek, or slough.

Notice must be proved.

SEC. 1071. The Board of Commissioners must not grant authority to construct or erect a toll bridge or ferry until the notice of such intended application has been given as respectively required in Article II and III of this chapter.

Duty of board of commissioners, granting authority.

SEC. 1072. The Board of Commissioners granting authority to construct a toll bridge or to keep a public ferry, must at the same time:

1. Fix the amount of a penal bond to be given by the person or corporation owing or taking tolls on the bridge or ferry for the benefit of the county and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof;

2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three nor over one hundred dollars per month, payable annually;

3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent. on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value together with the repairs and maintenance thereof for any succeeding year;

4. Make all necessary orders relative to the construction, erection, and business of licensed toll bridges or ferries which they have by law the power to make. The Board of Commissioners may, at any time they see fit, authorize fords across any water within any distance of any licensed toll bridge or ferry.

License tax and rate of tolls, how fixed.

SEC. 1073. The license tax and rate of toll fixed as provided in the preceding section may be increased or diminished, at any time, when it is shown to the satisfaction of the Board of Commissioners that the receipts from tolls any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the Board of Commissioners must not exceed ten per cent. of the tolls annually collected.

Report of bridge, ferry owner keeper.

SEC. 1074. Every owner or keeper of a toll bridge or ferry must report annually to the Board of Commissioners from which his license is obtained, under oath, the following facts:

1. The actual cost of the construction or erection, and equipment of the toll bridge or ferry;
2. The repairs made during the preceding year, and the actual cost thereof;
3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of their business;
4. The amount of tolls collected; and,
5. The estimated actual cash value of the bridge or ferry, exclusive of the franchise.

Inquiry of the board of commissioners fixing tolls.

SEC. 1075. Whenever the Board of Commissioners are about to fix the license tax and rate of tolls on a bridge or ferry they must make inquiry into the present actual cash value and the cost of all necessary repairs and maintenance thereof, and for that purpose may examine, under oath, the owner or keeper of the same, and other witnesses, and the assessed value of the bridge or ferry on the assessment roll of the county.

When to direct license to issue.

SEC. 1076. When the cost of construction or erection and equipment of the bridge or ferry, or the fair cash value thereof, together with the cost of needed repairs and the conduct and maintenance of the same, is ascertained and fixed for the preceding year, the Board must on such ascertained amount fix the annual license tax rate of tolls, and the amount of the penal bond, and direct a license to be issued by the Clerk.

Bond, conditions and execution.

SEC. 1077. The bond required of the owner or keeper of the toll bridge or ferry, must be in the sum fixed by the Board of Commissioners between one thousand and ten thousand dollars, with one or more sureties, and conditioned that the toll bridge or ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the laws of the Territory and all legal orders of the Board of Commissioners regulating the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such bridge or ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be approved by the Board and filed with the Clerk of the Board of Commissioners.

When bridge unites two counties. Comp. laws, 863–870.

SEC. 1078. The license tax of a ferry or bridge connecting two counties must be paid to the Treasurer of the county granting it, and the license issued by the Auditor thereof; but the Treasurer of such county must pay to the treasury of the county in which the other end or landing of the bridge or ferry is located, one-half the sum so received annually, or the Auditor may issue the license on filing with him receipts for their respective halves of the tax taken from the Treasurer of each of the two counties.

Board divided, probate judge to act.

SEC. 1079. When a Commissioner is interested in an application to erect, construct, or take tolls, or alter tolls on a bridge or ferry, the Probate Judge of the county must act in his stead.

Toll bridges or ferry within one mile of another, when.

SEC. 1080. No toll bridge or ferry must be established within one mile immediately above or below a regularly established ferry or toll bridge, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice hereinafter required, notice of intention to apply for authority to erect a toll bridge or ferry, as in this section provided, must be served upon the proprietor of the ferry or toll bridge already established at least ten days prior thereto, giving the time and place and grounds of such application.

How lands are acquired for use of bridge or ferry.

SEC. 1081. When there are lands necessary for the construction, erection or use of such bridge or ferry which cannot be procured by agreement between the owner or corporation and the land owner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

Must post rates of toll.

SEC. 1082. Every licensed toll bridge or ferry must have the rates of toll as fixed by the Board of Commissioners, printed or written, posted up in some conspicuous place on or near the bridge or ferry.

Revenue derived from license, disposal of.

SEC. 1083. The proceeds of the license tax on ferries and toll bridges must be paid into the County Treasury for the the use of roads and highways, or may be used by the Board of Commissioners at any time in the purchase of toll roads and toll bridges.

Banks to be kept in repair.

SEC. 1084. All ferry and toll bridge keepers must keep the banks of the streams or waters at the landings of their ferries and bridges graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the Road Fund of the county.

ARTICLE II.

Toll Bridges.

SECTION
1090. Application for leave to construct.
1091. Hearing application.
1092. Action of the Board of Commissioners.
1093. What the Board of Commissioners may require.
SECTION
1094. Use of highways.
1095. Completion of bridge, rate of toll, and license tax.
1096. Persons exempt.
1097. Penalty for avoiding tolls.
1098. County may purchase toll bridge.

Application for leave to construct. Comp. laws, 867.

SECTION 1090. Every applicant for authority to construct a toll bridge must publish a notice in at least one newspaper in each county in which the bridge or any part of it is to be, or if no paper is published therin, in an adjoining county once in each week for six successive weeks, specifying the location, the length and breadth of the bridge, and the time at which the application hereinafter required will be made. After notice is given, application must be made to the Board of Commissioners of the proper county, at any meeting specified in the notice, for authority to construct it.

Hearing application.

SEC. 1091. On the hearing, any person may appear and be heard. The Board may take testimony or authorize it to be taken by any judicial officer of the county; and it may adjourn the hearing from time to time. A copy of the articles of incorporation, certified by the Secretary of the

Territory or by the Clerk where they are filed, must be attached to and filed with the application if made by a corporation.

Action of board of commissioners.

SEC. 1092. If the Board are of opinion that the public interests will be promoted thereby, it may, by the assent of a majority of all the members of the Board, grant the application by an order entered in its minutes, and particularly describing the bridge. The applicant must cause a certified copy of the order, with a copy of the application to be recorded in the office of the Recorder of the county before proceeding under it.

What board of commissioners may require.

SEC. 1093. The Board of Commissioners may, at the time of granting authority to construct a toll bridge, by order, require the bridge to be constructed within a certain time, to be of a certain width, character, or description and to be constructed of certain materials, which order must be complied with by the owner or corporation constructing the same before license to take tolls is issued.

Use of highways.

SEC. 1094. The corporation or bridge owner may use, in such manner as prescribed by the Board, so much of any pubic road on either side of the stream or waters as may be necessary for constructing and maintaining the bridge and toll houses.

Completion of bridge, rate of toll, and license tax.

SEC. 1095. Every bridge erected under these provisions must have good and substantial railings or sidings, at least four and a half feet high. When a bridge is completed, and a certificate that it is so, and is safe and convenient for the public use, is signed by the Chairman of the Board of Commissioners, and filed in the County Recorder's office, in the county or counties in which it is located, the owner may erect a toll gate at such bridge and require such tolls as the Boards of Commissioners of the county or counties from time to time prescribe. A license therefor must be issued by the Auditor of the county on giving the necessary bond and paying the license tax fixed therefor.

Persons exempt.

SEC. 1096. Any person going to or from a funeral, school, performing highway labor, or Court, which by law he is required to attend as a witness in a criminal case, is exempt from the payment of tolls.

Penalty for avoiding tolls.

SEC. 1097. Any person liable to pay toll, forcibly or fraudulently passing the gate of a toll bridge without paying the toll is liable to a penalty of ten dollars in addition to the damages caused, to be recovered by the owner.

County may purchase toll bridge.

SEC. 1098. Within the same time, in like manner, and to the same effect as toll roads are purchased under the provisions of the last chapter, the county or counties, jointly acting, in which the same is situated, may purchase a toll bridge constructed under the provisions of this chapter.

ARTICLE III.

Toll Ferries.

SECTION
1105. Application for leave to erect, and notice.
1106. Duty of Board of Commissioners.
SECTION
1107. Powers of Board of Commissioners.
1108. Penalties, how disposed of.

Application for leave to erect and notice. Comp. laws, 867.

SECTION 1105. Every applicant for authority to erect and take tolls on a public ferry must publish a notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county for four successive weeks, specifying the location and the time and place, when and where the application will be made. After notice is given, application must be made in writing, under oath, to the Board of Commissioners of the proper county, the landings of the proposed ferry must be described, and the names of the owners thereof given, if known; and if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application.

Duty of board of commissioners.

SEC. 1106. At the hearing, proof of giving the notice as required by the preceding section, must be made, and any person may appear and contest the application. If the Board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, authority to erect and take tolls on the ferry may be granted to him.

Powers of board of commissioners.

SEC. 1107. The Board of Commissioners may make all needful rules and regulations for the government of ferries and ferry keepers, prescribing:

1. How many boats must be kept, their character, and how propelled;
2. The number of hands, boatmen or ferrymen to be employed, and rules for their government;
3. How many trips to be made daily;
4. When and under what circumstances to make trips in the night time;
5. Who must be ferried free of toll;
6. In what cases of danger or peril not to cross;
7. Penalties for violation of regulations;
8. In case of steamboats, the rate of speed;
9. The method of and preference in loading and crossing; and
10. How and by whom action must be brought to recover penalties.

Penalties, disposal of.

SEC. 1108. Penalties recovered under this article must be paid to the County Treasury for the use of the General Road Fund of the county.

CHAPTER V.

MISCELLANEOUS PROVISIONS RELATING TO TOLL ROADS, BRIDGES AND FERRIES.

SECTION
1120. Franchises deemed real estate.
1121. Liable for debts.
1122. Interest in may be attached.
1123. Purchaser, when to give bond.
1124. Tax of one per cent.
1125. Statement of receipts made annually.
1126. Moneys received, disposition of.

SECTION
1127. Proceedings upon forfeiture to pay right
1128. Keeping without license, penalty for.
1129. Taxes, failure to pay, penalty for.
1130. Right to construct bridge or ferry.
1131. Damages, remedy for.

Franchises deemed real estate. Act Jan'y 9, 1867.

SECTION 1120. For all purposes connected with the collection of debts, dues or demands, or the enforcement of obligations, a franchise for the building of bridges, the construction of roads or the maintenance of ferries is deemed real property and controlled by the rules governing the same.

Liable for debts. Act of Jan'y 9, 1867.

SEC. 1121. All rights or franchises to build, construct, or maintain roads, ferries or bridges, and charge toll thereon, or receive any compensation from the public for the use of the same, are subject in like manner as real property, to the payment or satisfaction of any judgment rendered in a suit to enforce the collection or satisfaction of any debt due, demand or obligation heretofore contracted, or which may hereafter be contracted.

SEC. 1122. All right, title or interest, claim, property or demand, in and to such franchise, road, bridge or ferry, may be attached in the same manner in which real property may be attached in any suit against any persons to whom said described franchises have been granted or conveyed, and the right, title and interest, property, claim and demand of said person may be levied upon and sold under execution, to satisfy any such judgment or decree, in the manner in which real property is levied upon and sold under execution, and subject to the same rules of redemption.

Interest may be attached. Act Jan'y 9, 1867.

SEC. 1123. In all cases where the person to whom any such right or franchise was originally granted, was required to execute any bond or undertaking for the performance of any act or acts connected with said franchise, the party or parties purchasing at sheriff's sale must, before the confirmation of said sale by the proper court, execute a similar bond or undertaking, to be approved and filed in like manner as the original.

Purchaser, when to give bonds. Act Jan'y 9, 1867.

SEC. 1124. One per cent of the gross proceeds of all toll roads, bridges and ferries, must be paid into the treasury of the Territory to be set apart and constitute a portion of the common school fund.

Tax of one per cent. Comp. laws, 859.

SEC. 1125. The grantees and their assigns of all toll roads, ferries and bridges, that now are or may hereafter be established must on oath make semi-annual statements to the Controller of the Territory, accompanied by the receipt of the Treasurer of the county, of the gross amount of receipts derived from toll received from any toll-road, ferry, or bridge in their possession or control.

Statement of receipts to be made annually. Comp. laws, 859.

SEC. 1126. All moneys received by the Territorial Treasurer by virtue of this chapter, are set apart and made a Territorial school fund, and are subject to the order of the Superintendent of Public Instruction, and must be apportioned among the respective counties of the Territory according to the number of school children in each. If any such grantee or his assigns refuses or neglects to make such report, or pay over said moneys or in any way make a false return or pays over a less amount than one per cent of such gross receipts, such failure works a forfeiture of his franchise; and it is the duty of the Territorial Controller to make out a certificate of such forfeiture with his seal of office attached, directed to the sheriff of the county in which the holders of such franchise have their place of business, directing said sheriff to serve the same immediately upon him or them at their place of business.

Moneys received, disposition of, etc. 8 ses., 859.

SEC. 1127. If any person undertakes to exercise any of the rights to such franchise after receiving notice from the Territorial controller as herein provided, of such forfeiture, he is guilty of a misdemeanor.

Proceedings upon forfeiture of right. 8 ses., 860.

SEC. 1128. Any and all persons who keep, or attempt to keep any toll road, bridge or ferry, and receive toll or pay therefor, without first obtaining a license for the same,

Keeping without license, penalty for. 8 ses., 869.

must pay a fine of not less than fifty dollars for each offense, for the benefit of the common school fund, and for which complaint may be made by any aggrieved party, before any Justice of the Peace having jurisdiction.

Taxes, failure to pay, penalty for.
8 ses., 870.

SEC. 1129. If any person licensed to keep a toll road, bridge, or ferry, fails to pay the taxes assessed thereon when due or does not provide or keep the same in good and complete repair, necessary for the safe travel and conveyance of persons and property, or abandons the same for the space of sixty days, the Board of Commissioners of the proper county, on complaint being made in writing, must summon the person licensed to keep such road, trail, bridge, or ferry, to show cause why such license should not be revoked, and the Board must decide thereon according to the testimony adduced, which decision is subject to appeal as in other cases, to the district court.

Right of way for bridges or ferry.
Comp. laws, 864.

SEC. 1130. The right to construct and keep a toll road, bridge or ferry granted by the Board of Commissioners under the provisions of this Title may be made exclusive for one mile on each side of the line of the road or of the landing of the bridge or ferry.

Damages, remedy for.
Comp. laws, 865.

SEC. 1131. Any damages sustained by any person or persons in crossing any toll bridge or ferry, or in traveling upon any toll trail or toll road, upon which toll gates are established or tolls collected, caused by the neglect of the owners thereof either by an unskillful management or failure to keep such bridge, ferry, toll road or toll trail in good repair for the accommodation of the traveling public are a lien upon said bridge, ferry, or toll road to be enforced by action; and the tolls allowed by law to be collected upon any toll road, ferry or bridge, are a lien upon any property passing over the same to be collected as other liens; but no damages shall accrue at any time when tolls are not charged.

TITLE VII.

GENERAL POLICE OF THE TERRITORY.

CHAPTER I.

PRESERVATION OF PUBLIC HEALTH.

SECTION
1150. County Board of Health.
1151. Sanitary rules.
1152. Physician to report contagious diseases.

SECTION
1153. Quarantine.
1154. Expenses, how paid.

County board of health.
13 ses., 52.

SECTION 1150. The Board of County Commissioners of each county must, biennially, at their regular meeting in January, appoint one intelligent person residing in the county, who must be an experienced and skillful physician. and the person so appointed, together with such Board of County Commissioners, constitute a county Board of Health for the term of two (2) years, or until successors be appointed and qualified. Any vacancy in such Board of Health, caused by the death or resignation of such physician or by his refusal to act as a member thereof, must be filled by appointment by the Commissioners. If any county has a physician employed to care for the indigent sick of such county, such physician must be appointed by the Board of Commissioners as a member of the Board of Health.

Sanitary rules.
13 ses., 52.

SEC. 1151. Said County Board of Health must make and establish for their county, or any district or place therein, such sanitary rules and regulations as they may deem necessary and proper to prevent the outbreak and spread of contagious and infectious diseases; and any person failing or refusing to comply with or obey said rules and regulations of said Boards is guilty of a misdemeanor.

Physician to report contagious diseases.
13 ses., 52.

SEC. 1152. It is the duty of every practicing physician to report promptly to the County Board of Health of the county in which he resides all or any disease of an infectious or contagious nature under treatment by him, and said Board must at once take the necessary precaution to prevent the spread of such contagious or infectious disease.

Quarantine.
13 ses., 52.

SEC. 1153. The Board of Health of any county may declare quarantine therein or in any particular district or place therein against the introduction of any contagious or infectious disease prevailing in any State, Territory, county or place, and if any and all persons and things liable to spread such contagious and infection. The said County Board has authority and power to enforce such quarantine until the same is raised by themselves, and may confine such afflicted person or persons liable to spread such contagion or infection to the house or premises in which he or she resides, or if such persons have no residence in the county, to a place to be provided by them for the purpose.

Expenses, how paid.
13 ses , 53.

SEC. 1154. All necessary expense incurred by the said County Board of Health in enforcing the provisions of this act must be paid for out of the treasury from the Current Expense Fund of the county.

CHAPTER II.

Unclaimed Property.

Section
1160. Common carriers may retain good until charges are paid.
1161. Property unclaimed within four months to be sold, how.
Section
1162. Proceeds unclaimed, where to go.
1163. Property upon which advances are made may be sold, when.

Common carriers may retain goods until charges are paid.

Section 1160. When any goods, merchandise or other property has been received by any railroad or express company, or other common carrier, commission merchant, innkeepers or warehousemen for transportation or safe keeping, and are not delivered to the owner, consignee or other authorized person, the carrier, commission merchant, innkeeper or warehouseman, may hold or store the same with some responsible person, until the freight and all just and reasonable charges are paid.

Property unclaimed within four months, disposition of.

Sec. 1161. If no person calls for the property within four months from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, innkeeper or warehouseman may sell such property, or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper ten days, (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale.

Unclaimed proceeds, where to go.

Sec. 1162. If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid over into the County Treasury, subject to the order of the owner.

Property upon which advances are made may be sold, when.

Sec. 1163. When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property, and makes advances thereon for freight and charges, he may, if the same is not paid to him within four months from the date of such advances, cause the produce, merchandise, or property on which the advances were made, to be advertised and sold as provided herein.

CHAPTER III.

Marks and Brands.

Section
1170. Stock drovers. Stock growers.
1171. Brand for cattle. Brand for horses. Brand for sheep and hogs.
1172. Purchase of stock and brands. Live stock to be marked.
1173. Records of brands.
1174. Place of branding.
1175. Earmarks.
1176. Same brand not to be recorded by more than one stock-grower.
1177. Partnership brands.
1178. Defacing or counterfeiting of brands.
1179. Brand to be prima facie evidence of ownership.
Section
1180. Road brands; cattle not belonging to stock-drover found in his herds.
1181. Driving cattle from range by person not owning the same. Penalty of; evidence warranting conviction.
1182. Liability to civil action. Attachment of stock.
1183. Prevention of trespassing of cattle; herding of cattle on improved land, penalty for.
1184. Stock inspectors; duties and powers of; compensation of.
1185. Violation of provisions of this chapter; penalty for.

Stock drovers. 11 ses , 295.

Section 1170. Every person, whether owner or employee, who drives or brings, or assists in driving or bringing any cattle, horses, mules, asses, sheep, or hogs, through or into this Territory, is deemed a stock drover. Every person who owns any cattle, horses, mules, asses, sheep or hogs, in this Territory, and is engaged in the business of breeding, growing, or raising the same for profit, is deemed a stock-grower; and all cattle, horses, mules, asses, sheep, and hogs are deemed live stock.

Stock growers. Live stock.

Brands for cattle, horses, sheep and hogs. 11 ses., 295.

SEC. 1171. Every stock-grower in this Territory must use one, and only one brand and mark for cattle; *Provided*, That any stock-grower may use a smaller sized brand to brand his cattle on the horns, of the same kind as his flesh brand; one and only one brand or mark for horses, mules, and asses; one and only one brand or mark for sheep; and one and only one brand or mark for hogs; which brands and marks must be placed upon some conspicuous part of the animal branded or marked; *Provided*, That nothing in this chapter forbids the use of one brand or mark for all or several of the four classes of live stock hereinbefore enumerated in this section; but a stock-grower may, at his option, use a different brand and mark for each of the aforesaid four classes of live stock.

Purchase of stock and brands. 11 ses., 296.

SEC. 1172. In all cases of the purchase of an entire band of live stock by any resident stock-grower, together with the sole right to the brand of the party selling said live stock, it is lawful for the party purchasing such band and brand to have such purchased brand recorded in his own name, upon presentation to the County Recorder of the county where such brand is recorded of a duly authenticated bill of sale of such brand and band of live stock, but it is not lawful for any stock-grower to use more than one of these brands or marks, on the increase of his band of live stock. But the provisions of this section must not be so construed as to release any stock drover from the obligations to brand or mark all live-stock driven through any portion of this Territory, as hereinafter provided.

All live stock to be marked.

Record of brands. 11 ses., 296.

SEC. 1173. Every stock-grower must record, in the office of the County Recorder of his county, a full and correct description of his brands and marks, describing particularly on what part of the animal to be marked or branded, the brand or mark is to be placed. He may also, at his discretion, record the same in the office of the County Recorder of any other county or counties within the Territory.

Place of branding. 11 res, 296.

SEC. 1174. No stock-grower in this Territory must use any other brands or marks than the brands and marks recorded, as provided for in section four of this chapter, which must in all cases be placed on the part of the animal designated in the description recorded. When there is already a brand on that particular place, then as near thereto as possible; *Provided*, That stock kept for use need not be branded unless the owner or owners choose to brand them.

Ear marks. 11 ses., 296.

SEC. 1175. Any stock-grower in this Territory may select an earmark, and after recording the same as hereinbefore provided, may use the same in marking his live stock. Such mark must be made by cutting or shaping the ear or ears of the animal so marked; but in no case must the person so marking the animal, cut off more than one-third of the ear, or cut an ear on both sides to a point.

Same brand not to be recorded by more than one stock grower. 11 ses., 297.

SEC. 1176. No stock-grower must have recorded or use, and no County Recorder must record, any brand or mark which has been previously selected or recorded by any person or persons in his county, unless the same has been abandoned, and notice of the abandonment duly recorded by the County Recorder of his county, except as provided in section 1172 of this chapter.

Partnership brands. 11 ses., 297.

SEC. 1177. Partners in stock-growing may adopt and use partnership brands or marks, in which case they must select, record and use the same in the manner provided for the individual stock-growers, or they may adopt and use the individual brand or mark of any individual member of the partnership, duly selected and recorded as provided in this chapter.

Defacing or counterfeiting of brands. 11 ses., 297.

SEC. 1178. No stock-grower or other person in this Territory must change, conceal, deface, disfigure, or obliterate any brand or mark previously branded, impressed or marked on any head of live stock, or put his own, or any other brand upon or over any part of any brand previously branded upon any head of live stock, and no person must mark or use any counterfeit of any brand or mark provided for in this chapter.

Brands to be prima facie evidence of ownership. 11 ses., 297.

SEC. 1179. In all civil suits, or in any criminal proceeding, where the title of any live stock is involved, the brand or mark on any such animal is *prima facie* evidence of the ownership of the person whose brand or mark it may be: *Provided*, That such brand has been duly recorded as required by this chapter. Proof of the right of any person to use such brand or mark may be made by a copy of the record of the same, certified by the County Recorder of any county in which the same is recorded.

Road brand. 11 ses., 297.

SEC. 1180. It is the duty of every stock drover to select and use a road brand for all live stock driven or moved through or into this Territory by him or by his assistance or direction, which road brand must be plainly and distinctly branded on some conspicuous part of each animal; and it is the duty of every such stock drover or his assistants, each day to carefully search through and examine his herd or drove after driving or moving them over any portion of this Territory, and separate from and drive and keep away from his herd or drove all live stock not belonging thereto and not branded with his road brand; *Provided*, That any drover may drive the stock of other drovers with different brands; but he must have written authority from the owner to drive said stock.

Cattle not belonging to stock drover not found in his herd.

Driving cattle from range by person not owning the same.

SEC. 1181. Any person not being the owner or entitled to the possession of any head of live stock, who is found knowingly and willfully driving, riding or leading, or assisting to drive, ride or lead the same away from its usual range, unless he corrals the same at the first corral nearest to such range, is guilty of a misdemeanor. And proof that such person was found driving, riding or leading such live stock from its usual range, as aforesaid, is evidence sufficient to warrant a conviction, unless the evidence produced on the trial shows that the accused acted in good faith and with an innocent purpose; *Provided*, That any stock-grower or his employees may drive any stock that he finds herding with any stock belonging to him or under his control on the

Penalty of. 11 ses., 298.

Evidence warranting conviction.

range to the nearest suitable corral that can be obtained, and there separate it from the stock of said stock-grower, and such stock must be by him driven or caused to be driven back to or near the range from which such stock was driven.

Corral of cattle not owned by drover.

Liability to civil action.
11 ses., 298.

SEC. 1182. Any stock drover or other person engaged in driving or moving any herd or drove of live stock through this Territory, who, without the owner's consent, drives or moves, or assists in driving or moving, any herd of live stock, the property of another person, away from its usual or accustomed range in this Territory, is guilty of a misdemeanor; and is also liable for damages in a civil action in any court of competent jurisdiction in this Territory by the party injured, for double the value of each head of live stock so as aforesaid driven or moved away, together with costs of suit; and the party injured may at the commencement of such civil action, or during the pendency thereof, have such herd or drove of live stock or such number of live stock thereof as are sufficient, attached, seized, and held as security for all damages and costs that may be recovered in such action.

Attachment of stock.

Prevention of trespassing of cattle.
11 ses., 299.

SEC. 1183. Any person owning or having charge of any herd or drove of live stock, who drives or moves the same into or through any county in this Territory, in which the owner thereof is not a resident or land owner, and where the land is owned or is occupied and improved, must prevent such herd or drove from mixing with the live stock belonging in said county and must also prevent such herd or drove from trespassing on land in the possession of any actual settler, and used by him for grazing purposes, or for the growing of grain, hay, or other crops, or injuring any ditches owned or used by such settler. If any owner or person in charge of any such herd or drove of live stock willfully or negligently injures any resident of this Territory by driving or moving such herd or drove of live stock from any public highway, and herding or grazing the same on land occupied and improved by any settler in possession of the same, he is guilty of a misdemeanor; and is also liable in a civil action to the party injured for the damages by him sustained.

Herding of cattle on improved land.

Stock inspectors, duties and powers of; compensation of.
11 ses., 299.

SEC. 1184. The County Commissioners of any county in this Territory must upon petition of five of the resident stock-owners of said county, appoint one or more inspectors; said inspectors must be experienced stock men, and duly sworn to faithfully perform the duties and requirements of this chapter, whose duty it is to discover and detect any violation of this chapter or of any law of this Territory relating to live stock. Said inspector or inspectors have full power to cut out and separate from any herd or drove of live stock, all range stock of every description not belonging to such herd or drove, and to detain the herd or drove for that purpose, and have full power without a warrant, to arrest any person or persons violating any of the provisions of this chapter, and take them before any court having jurisdiction of the offense. They may receive such compensation for their services as are allowed by any Board of County Commissioners of such county, to be paid out of the county treasury. Any Board of County Commissioners in this Territory may offer and provide for the payment of suitable rewards for the detection of any violation of this chapter.

Violation of this chapter. 11 ses., 300.

SEC. 1185. Any person violating any of the provisions of this chapter, is guilty of a misdemeanor.

CHAPTER IV.

PROTECTION OF STOCK-GROWERS.

SECTION
1195. Persons slaughtering cattle to keep record.
SECTION
1196. Must preserve hide thirty days.
1197. Penalty.

Persons slaughtering cattle to keep record. 9 ses., 36.

SECTION 1195. Any person engaged in the business of slaughtering cattle, must keep at their place of business a book in which they must enter daily the number and class of cattle slaughtered, the name of the person or persons from whom said cattle were purchased, and the marks and brands of such cattle. Said book must be kept ready at all times for the inspection of any person who may desire to examine the same.

Must preserve hide thirty days. 9 ses., 36.

SEC. 1196. Any person not regularly engaged in the business of slaughtering cattle, who at any time slaughters any cattle, must retain in his possession the hide taken off said cattle with the ears attached thereto without any alteration of the marks on the same, or any disfiguration of the brand for the period of thirty days, and any owner of cattle may within the period of time herein mentioned demand an exhibition of the hide or hides of any cattle so killed or slaughtered by the person so killing the same, or by any other person for whose use and benefit such animal or animals were killed, and upon such demand being made he must produce said hide or hides for inspection.

Penalty. 9 ses., 37.

SEC. 1197. Any person violating any of the provisions of this chapter, or who may destroy the hide of any cattle slaughtered, within thirty days from the slaughtering thereof, is guilty of a misdemeanor.

CHAPTER V.

DOGS KILLING SHEEP OR GOATS.

SECTION 1205. Killing sheep by dogs.

Killing sheep by dogs. 8 ses., 843.

SECTION 1205. The owner, possessor, or harborer of any dog or other animal that kills, worries, or wounds any sheep, angora or cashmere goats, is liable to the owner of the same for the damages and costs of suit, to be recovered before any Court of competent jurisdiction:

1. In the prosecution of actions under the provisions of this Title it is not necessary for the plaintiff to show that the owner, possessor, or harborer of such dog or other animal had knowledge of the fact that such dog or other animal would kill or wound sheep or goats;

2. Any person, on finding any dog, not on the premises of its owner or possessor, worrying, wounding, or killing any sheep, angora or cashmere goats, may at the time of so finding said dog kill the same, and the owner thereof can sustain no action for damages against any person so killing such dog.

CHAPTER VI.

SHEEP.

SECTION
1210. Herding of sheep.
1211. Penalty.
1212. Same.
1213. Sheep Commissioner.
1214. Summon assistance.
1215. Certificate of Health.
1216. Duties of Sheep Commissioner.
1217. Proceed to examine.
1218. Driving of sheep.
1219. Owners wishing to move sheep.
1220. Penalty.
1221. Infected sheep.
1222. Compensation of Commissioner.

SECTION 1210. It is not lawful for any person owning or having charge of sheep to herd the same, or permit them to be herded on the land or possessory claims of other persons, or to herd the same or permit them to graze within two miles of the dwelling house of the owner or owners of such possessory claim.

Herding of sheep. Act Jan'y 14, 1875.

SEC. 1211. The owner or the agents of such owner of sheep violating the provisions of the last section, on complaint of the party or parties injured before any Justice of the Peace for the precinct where either of the interested parties may reside, is liable to the party injured for all damages sustained; and if the trespass be repeated; is liable to the party injured for the second and every subsequent offense in double the amount of damages sustained.

Penalty. Act Jan'y 14, 1875.

SEC. 1212. When the owner or the agent of such owner of sheep found trespassing upon the land or possessory claims of another, or within two miles of the dwelling house of the claimant or occupant of such possessory claim, is unknown to the party injured by such trespass, all sheep so trespassing may be treated as estrays.

Same. Act Jan'y 14, 1875.

SEC. 1213. It is the duty of the Board of County Commissioners of the several counties of this Territory, on the application of three property holders, to appoint a Sheep Commissioner who must subscribe an oath and enter into bonds to the county in any sum that the County Commissioners may designate, for the faithful performance of the duties of his office.

Sheep commissioner. 12 ses., 58.

SEC. 1214. The Sheep Commissioner has the power, if deemed necessary, to summon to his assistance at any examination, competent persons as experts to assist him.

Summon assistance. 12 ses., 59.

SEC. 1215. The Sheep Commissioner, if upon examination of any flock of sheep finds them free from scab or other infectious diseases, must make and deliver to the owner or owners of said sheep a certificate in writing, stating that at the date of such certificate said sheep were in a healthy condition. Said certificate must be recorded in a book kept for that purprse, before it is delivered.

Certificate of health. 12 ses., 59.

SEC. 1216. It is the duty of the Sheep Commissioner to make within ten days after the examination, a statement in writing with his certificate attached thereto, which statement must set forth the condition of each and every band or flock of sheep in his county and record the same in a book provided for that purpose to be kept in the office of the County Auditor.

Duties of commissioner 12 ses., 59.

SEC. 1217. The Sheep Commissioner must, at any time, upon complaint under oath being made to him, that any sheep within his county, are infected with scab or other in-

Proceed to examine. 12 ses., 59.

fectious disease, proceed at once to examine the sheep so complained of and if such sheep are found to be so infected, then the certificate of the soundness of such sheep which may have been issued, must be annulled, and he must enter on the margin of the record of such certificate the word "annulled," and the date thereof; but if the complaint is found to be frivolous or malicious, then the party making such complaint must pay all the costs of such examination.

Driving of sheep. 12 ses., 59.

SEC. 1218. No sheep must be permitted to enter any county of the Territory, until the same have been examined by the Sheep Commissioner of the county, and a certificate of the healthfulness of such sheep is issued by the said Sheep Commissioner to the owner thereof; *Provided*, That where any person or persons may be driving their sheep with due diligence through the Territory, a certificate, as provided in this section, from the Commissioner of the county first entered will be sufficient for all counties through which they may pass.

Owner wishing to move sheep. 12 ses., 60.

SEC. 1219. It is the duty of the Sheep Commissioner, when notified that the owner of any sheep wishes to move the same into his county, to proceed as soon as may be to examine said sheep, and, if found in a healthy condition, he must deliver to the owner thereof a certificate to that effect, whereupon such sheep must be permitted to enter his county; no sheep must enter any of the counties of this Territory until such certificate has been obtained.

Penalty. 13 ses., 179.

SEC. 1220. If any person drives or causes to be driven any sheep into any counties of this Territory and fails for the space of ten days after such sheep are driven therein, to obtain a certificate of the healthfulness of such sheep, such person is deemed guilty of a misdemeanor, and must be fined in any sum not less than two hundred and fifty nor more than five thousand dollars, and in default of payment must be committed to the county jail at hard labor until such fine and costs are paid.

Infected sheep. 12 ses., 60.

SEC. 1221. Any person owning any sheep infected by scab or any other infectious disease, must keep the same secure from contact with other sheep, and must not move or drive the same upon any highway, by-way, or across any range where other sheep are liable to range or be driven; but the owner of such sheep so infected may move the same, by first obtaining a written permission of the Sheep Commissioner of the county wherein he wishes to move them, which permission must state the manner in which they are to be moved, and the place to which they are to be moved, and the route designated; but the Sheep Commissioner must not give permission to any person to move any sheep so infected across any range where healthy sheep are accustomed to range. Any person violating any of the provisions of this section is guilty of a misdemeanor, and must be fined in any sum not less than two hundred and fifty, nor more than two thousand dollars; and the Sheep Commissioner has the power to regulate the herding of sheep already within the limits of his county that are or may be infected with scab or other infectious disease.

Compensation of commissioner. 13 ses., 179.

SEC. 1222. The services of the Sheep Commissioner so rendered by him, are a lien upon the sheep so examined by him, and if the owner of such sheep, or any agent of such owner thereof, or other person having the same in charge, refuses or fails for the space of ten days after the presentation to him of the claim of said Commissioner for his said services to pay the same, the said Commissioner has the right to distrain and sell in manner now provided by law for the forced sale of personal property on execution, so many of such sheep as may be required to pay his said claim and all costs and expenses incurred in such distraining and sale.

CHAPTER VII.

LIABILITIES OF STOCK RANCHERS.

SECTION
1230. Who deemed stock rancher.
1231. Duty of.

SECTION
1232. Using horses, penalty for.

SECTION 1230. Every person who, for a consideration, takes horses or other stock to keep and take care of by the day, week, month or year, is deemed a stock rancher. Who deemed stock rancher. Comp. laws, 744.

SEC. 1231. It is the duty of every stock rancher to use due diligence to prevent the death or loss of, or injury to, any animal in his charge as such rancher; and in case of death, loss or injury to such animal while in possession of a stock rancher, the owner thereof may recover before any court of competent jurisdiction, the full amount of damages sustained, if it appears that such loss, death or injury was in consequence of the failure of the stock rancher to use due and reasonable diligence. Duty of. Comp. laws, 744.

SEC. 1232. Any stock rancher using any animal placed in his charge, by riding or working the same in any manner whatever, unless there is an express contract between himself and the owner thereof allowing such animal to be used, forfeits all claims or demands for ranch fees on such animal; and he is liable for any damages or injury to such animal by reason of such use. Using horses, penalty for. Comp. laws, 744.

CHAPTER VIII.

STALLIONS RUNNING AT LARGE.

SECTION
1240. What stallions may run at large.
1241. What may not.

SECTION
1242. May be castrated.
1243. When the owner is unknown.

SECTION 1240. The owner of any stallion over the age of eighteen months must not allow the same to run at large unless it is of the cash value of one hundred and fifty dollars or more. What stallions may run at large.

SEC. 1241. If any stallion of less than one hundred and fifty dollars cash value, or any ridgling, or any unaltered male mule or jackass over the age of eighteen months, be found running at large, the owner must be fined for the first offense twenty dollars, and for each subsequent offense not more than one hundred dollars nor less than forty dollars, to be recovered before a Justice of the Peace in the name of any person who will prosecute for the same, one-half to his own use and the other half to the use of the County School Fund. What may not. 13 ses., 43.

SEC. 1242. Any person may take up and safely keep any such horse, mule or jackass found running at large, or May be castrated. 13 ses., 43.

in his enclosures, and when so doing must give the owner thereof five days' notice that such an animal is in his possession; and if at the expiration of the aforesaid time the owner neglects to remove such animal and pay all reasonable costs for keeping the same, then the taker up may cause such animal to be castrated.

When owner is unknown. 13 ses., 13.

SEC. 1243. Should the owner of such animal be unknown, then it is the duty of the person in whose possession the animal may be, to forthwith give ten days' notice with the description of the animal, its marks or brands, by posting up at least three written or printed notices in at least three conspicuous places in the county, calling upon the owner to claim the property; and if at the expiration of the ten days the owner neglects to remove such animal and pay all reasonable costs for keeping the same, the party taking up said animal may cause it to be castrated, such castration being performed in the usual manner, so that the life of the animal be endangered as little as possible.

CHAPTER IX.

WEIGHTS AND MEASURES.

SECTION
1250. Weights of bushels of various products.

SECTION
1251. Stone masonry.

Weights of bushels of various products. Act Jan'y 12, 1883.

SECTION 1250. Whenever wheat, rye, Indian corn, barley, buckwheat, flaxseed, or oats are sold by the bushel, and no special agreement as the weight or measurement is made by the parties, the bushel consists of sixty pounds of wheat, of fifty-four pounds of rye, of fifty-two pounds of Indian corn, of fifty pounds of barley, of forty pounds of buckwheat, of fifty-six pounds of flaxseed, and of thirty-two pounds of oats.

Stone masonry, standard of. Act Jan'y 29, 1883.

SEC. 1251. The perch is the standard of measurement of stone masonry, and contains sixteen and one-half solid feet.

CHAPTER X.

MONEY OF ACCOUNT AND INTEREST.

SECTION
1260. Dollar, cent and mill.
1261. Money of other denominations.
1262. Judgments, how computed.
1263. Interest, legal rate.

SECTION
1264. Interest, contract rate.
1265. Compound interest.
1266. Usury, penalty for.

Dollar, cent and mill. Act Feb. 21, 1879.

SECTION 1260. The money of account in this Territory is the dollar, cent, and mill, and all public accounts and the proceedings of all courts in relation to money must be kept and expressed in money of the above denominations.

Money of other denominations. Act Feb. 21, 1879.

SEC. 1261. The above provisions do not in any manner affect any demand expressed in money of another denomination, but such demand in any suit or proceeding affecting the same must be reduced to the above denominations.

Judgments, how computed. Act Feb. 21, 1879.

SEC. 1262. In all judgments rendered by any court for any debt, damages, or costs, and in all executions issued thereon, the amount must be computed, as near as may be, in dollars and cents, rejecting small fractions; and no judgment or other proceeding is erroneous for such omission.

Interest, legal rate. Act Feb. 21, 1879.

SEC. 1263. When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of ten cents on the hundred by the year, on:

1. Money due by express contract;
2. Money after the same becomes due;
3. Money lent;
4. Money due on the judgment of any competent court or tribunal;
5. Money received to the use of another, and retained beyond a reasonable time without the owner's consent, express or implied;
6. Money due on the settlement of mutual accounts from the day the balance is ascertained;
7. Money due upon open accounts after six months from the date of the last item.

Interest. Contract note. Act Feb. 21, 1879.

SEC. 1264. Parties may agree in writing for the payment of any rate of interest on money due or to become due on any contract, not to exceed the sum of one and one-half per cent. per month; any judgment rendered on such contract bears interest at the rate of ten per cent. per annum until satisfied.

Compound interest. Act Feb. 21, 1879.

SEC. 1265. Compound interest is not allowed, but a debtor may agree in writing to pay interest upon interest over-due at the rate of such agreement.

Usury, penalty for. N. S.

SEC. 1266. If it is ascertained in any suit brought on any contract, that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money or in property, such contract works a forfeiture of ten cents on the hundred by the year, and at that rate, upon the amount of such contract, to the School Fund of the county in which the suit is brought and the plaintiff must have judgment for the principal sum less all payments of principal or interest theretofore made and without interest or cost. The court must render judgment in said action for ten per cent per annum upon the entire principal of said contract, against the defendant in favor of the Territory for the use of the School Fund of the county, whether the unlawful interest is contested or not; and in no case where unlawful interest is contracted for, must the plaintiff have judgment for more than the principal sum less the payments already made, whether the unlawful interest be incorporated with the principal sum or not. But no indorsee in due course of negotiable paper, is affected by any usury exacted by any former holder of such paper unless he have actual notice of the usury previous to his purchase; but in no such case the judgment above provided in favor of the School Fund must be entered against the drawer or maker, if a party to the action, and he may recover back the usury paid from the party who received the same.

CHAPTER XI.

AUCTIONEERS OF LIVE STOCK.

SECTION
1275. Must keep a register.
1276. Must enter description.
1277. Register open to inspection.
SECTION
1278. Register deposited with Recorder.
1279. Penalty.

Must keep a register.
13 ses., 32.

SECTION 1275. Every person who is licensed, under the laws of this Territory, to sell live stock or other goods and wares, must keep in his office a book for the purpose of registering a description of each animal that he may sell; to be called the Auctioneer's Register Book of stock sold.

Must enter description.
13 ses., 33.

SEC. 1276. Every auctioneer before selling any animal, must take down in ink on the register book, provided for in the preceding section, a correct description of each animal he is about to sell, the color, age, mark and brand as near as practicable; also the date and name of, and residence of the owner of said animal, and, when sold, add to said description the name and residence of the purchaser.

Register open to inspection.
13 ses., 33.

SEC. 1277. Every auctioneer's register book of stock sales must, upon application by any county or territorial officer, or any stock grower of the county, be open for his inspection.

Register deposited with recorder.
13 ses., 33.

SEC. 1278. Any auctioneer who discontinues the business of selling live stock or removes from the county, must deliver to the Recorder of said county, all of his register books of live stock sold. The recorder must keep said register in his office for the inspection of any citizen of the county or Territory.

Penalty.
12 ses., 33.

SEC. 1279. Any auctioneer failing to comply with the provisions of this chapter is guilty of a misdemeanor.

CHAPTER XII.

PRACTICE OF PHARMACY.

SECTION
1282. Sale of drugs and poisons.
1283. Who may be registered as a Pharmacist.
1284. Graduates in pharmacy.
1285. Licentiates in pharmacy Examination. Certificates. Assistant pharmacist.
1286. Board of pharmacy.
1287. Organization and duties of Board. Prosecutions. Meetings. Register.
1288. Persons now engaged in the business.
1289. Clerk and assistants in pharmacy. Renewal of certificates. Fees.
1290. Fees and charges.
SECTION
1291. Annual fees. Certificate to be posted.
1292. Compensation of Board. Disposition of moneys. Bond of Secretary. Report.
1293. Trading without registration. Permitting unregistered person to sell. Failure to renew registration. Penalty. Physician. Proprietary medicines.
1294. Adulteration of drugs. Penalty.
1295. Poisons must be marked and record kept.
1296. Prosecutions under this chapter.
1297. Repealing clause.

Sale of drugs and poison.

SECTION 1282. (Sec. 1.) It shall hereafter be unlawful for any person, other than a registered pharmacist, to retail, compound or dispense drugs, medicines or poisons, or to institute or conduct any pharmacy, store or shop for retailing, compounding, or dispensing drugs, medicines or poisons, unless such person shall be a registered pharmacist or shall employ and place in charge of said pharmacy or store a registered pharmacist within the full meaning of this act as hereinafter provided.

SEC. 1283. (Sec. 2.) In order to be registered, within the full meaning of this act, all persons must be either graduates in pharmacy, or shall, at the time this act takes effect, be engaged in the business of a dispensing pharmacist on their own account, in the Territory of Idaho, in the preparations of physicians prescriptions and in the vending and compounding of drugs, medicine and poisons, or shall be licentiates of pharmacy. Who may be registered as a pharmacist.

SEC. 1284. (Sec. 3.) Graduates in pharmacy shall be considered to consist of such persons as have had four years practical experience in drug stores where prescriptions of medical practitioners are compounded, or have obtained a diploma from such colleges or schools of pharmacy as shall be approved by the Board of Pharmacy. Such shall be judged by the said Board of Pharmacy as sufficient guarantee of their attainments and proficiency. Graduates in pharmacy.

SEC. 1285. (Sec. 4.) Licentiates in pharmacy shall be such persons as have had two years' practical experience in drug stores wherein the prescriptions of medical practitioners are compounded, and have sustained a satisfactory examination before such Board of Pharmacy hereinafter mentioned. The said Board of Pharmacy may grant certificates of registration to licentiates of such other State Boards as it may deem proper without further examination. It shall be the duty of the Board to grant in towns or villages of less than five hundred inhabitants, a minor certificate to such persons as they may deem competent to sell or vend such medicines and compounds as are required by the general public, but such parties shall not be considered competent unless they have had two years' experience in the sale of such medicines and compounds. The said certificate shall entitle the holder thereof only to registration as assistant pharmacist in towns and villages of over five hundred inhabitants. Licentiates in pharmacy. Examination. Certificates. Minor certificate. Assistant pharmacist.

SEC. 1286. (Sec. 5.) The County Commissioners of each county in the Territory of Idaho at their first meeting after the passage of this act, shall appoint three reputable and practicing pharmacists or physicians of such county, *Provided*, There be the required three members residing therein; if not, then they shall select so many as may be required to fill said Board from the nearest and most convenient adjoining county who shall constitute the Board of Pharmacy of such county, and shall hold office as respectively designated in their appointments, for the term of one, two and three years respectively, as hereinafter provided, and until their successors have been duly appointed. The County Commissioners shall annually thereafter appoint one pharmacist or physician to fill the vacancy annually occurring in said Board. The term of office shall be three years. In case of the resignation or removal from the county of any member of said Board, or of a vacancy occurring from any cause, the County Commissioners shall fill the vacancy by appointing some reputable pharmacist or physician to serve as member of the Board for the remainder of the term. Board of pharmacy. Term of office. Vacancies.

SEC. 1287. (Sec. 6.) The said Board shall within thirty days of its appointment meet and organize by the selection of a Chairman and Secretary from the number of its own Organization of board. Duties of board.

members, who shall serve for the term of one year and shall perform the duties prescribed by the Board. It shall be the duty of the Board to examine all applications for registration submitted in proper form; to grant certificates of registration to such persons as may be entitled to the same, under the provisions of this act; to cause the prosecution of all persons violating its provisions; to report annually to the County Commissioners; said report shall furnish a record of the proceedings of the said Board for the year, as well as the names of all pharmacists duly registered under this act. The Board shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties, at least once in six months, and the said Board shall give thirty days notice of the time and place of such meeting. The said Board shall keep a book of registration in which shall be entered the names and places of business of all persons registered under this act, which registration book shall also contain such facts as said persons shall claim to justify their registration.

Prosecutions.

Meetings of the board

Notice.

Register.

Persons now engaged in the business.

SEC. 1288. (Sec. 7.) Every person claiming the right of registration under this act, who shall within three months after the passage of this act, forward to the Board of Pharmacy satisfactory proof supported by his affidavit, that he was engaged in the business of dispensing pharmacist on his own account in said county at the time of the passage of this act as provided in section 2, shall upon the payment of the fee hereinafter mentioned, be granted a certificate of registration, *Provided*, That in case of failure or neglect to register as herein specified, then such person shall in order to be registered, comply with the requirements provided for registration as graduates of pharmacy or licentiates in pharmacy, within the meaning of this act.

Clerks and assistants.

SEC. 1289. (Sec. 8.) Any person engaged in the position of assistant or clerk in pharmacy at the time of this act takes effect, not less than eighteen years of age, who shall have had at least two years' experience in drug stores where the prescriptions of medical practitioners are compounded, and who shall furnish satisfactory evidence to that effect to the Board of Pharmacists shall, upon making application for registration and upon payment to the Secretary of said Board a fee of one dollar within sixty days after this act takes effect, be entitled to a certificate as "registered assistant" which certificate shall entitle him to continue in such duties as clerk or assistant, but such certificate shall not entitle him to engage in business on his own account except as provided for in section 4, or to the certificate of registered pharmacist, unless he shall have had at least four years' experience in such stores where the prescriptions of medical practitioners are compounded at the time of the passage of this act. Thereafter he shall pay annually to the said Secretary the sum of one dollar during the time he shall continue in such duties in return for which sum he shall receive a renewal of his certificate.

Renewal of certificate.

Fees.

SEC. 1290. (Sec. 9.) Every person claiming registration as a registered pharmacist under section 7 of this act shall, before a certificate is granted pay to the Secretary of said Board of Pharmacy the sum of five dollars and a like sum shall be paid to said Secretary by graduates in pharmacy and

Fees.

by such licentiates of other boards who shall apply for registration under this act, and every applicant for registration by examination shall pay to the said Secretary the sum of ten dollars before such examination be attempted.

Annual fee.

Certificates to be posted.

SEC. 1291. (Sec. 10.) Every registered pharmacist who desires to continue the practice of his profession shall, annually during the time he shall continue in such practice, on such date as the Board of Pharmacy may determine, pay to the Secretary of such Board a registration fee, the amount of which shall be fixed by the Board and which, in no case, shall exceed five dollars; in return for which payment he shall receive a renewal of said registration. Every certificate of registration, and every renewal of such certificate shall be conspicuously exposed in the pharmacy to which it applies.

Compensation of members of board.

Disposition of moneys.

Bond of secretary.

Report of receipts and disbursements.

SEC. 1292. (Sec. 11.) Each member of such Board of Pharmacy shall receive the sum of three dollars per day for each day actually engaged in such service and all legitimate and necessary expenses incurred in attending the meetings of such Board; said expenses shall be paid from the fees and penalties received by said Board under this act, and no part of the salary, or other expenses of said Board, shall be paid out of the public treasury. All moneys received by said Board in excess of said allowance and other expenses hereinbefore provided for, shall be held by the Secretary of said Board as a special fund for meeting the expenses of said Board; said Secretary giving such bonds as the said Board shall from time to time direct. The said Board shall in its annual report to the County Commissioners render an account of all moneys received and disbursed by them pursuant to this act.

Trading without being registered.

Compounding and selling by other persons.

Failure to renew registration.

Penalty.

Physician.

Proprietary medicines.

SEC. 1293. (Sec. 12.) Any person not being or not having in his employ a registered pharmacist, within the full meaning of this act, except as provided in section 4, who shall after the expiration of ninety days from the passage of this act keep a pharmacy store or shop for retailing, compounding or dispensing medicines, or who shall take, use or exhibit the title of a registered pharmacist, shall for each and every such offense be liable to a penalty of fifty dollars. Any registered pharmacist or other person who shall permit the compounding or dispensing of prescriptions or the vending of drugs, medicines or poisons in his store or place of business except under the supervision of a registered pharmacist, or except by registered assistant pharmacist or any pharmacist, or registered assistant who, while continuing in business shall fail or neglect to procure his annual registration, or any person who shall willfully make any false representation to procure registration for himself, or other person, or who shall violate any of the provisions of this act, shall for each and every such offense be liable to a penalty of fifty dollars, *Provided*, That nothing in this act shall in any manner interfere with the business of a physician in regular practice, or prevent him from supplying to his patients such articles as may seem to him proper, nor with the making and vending of proprietary medicine or medicines placed in sealed packages with the name of the contents and of the pharmacist or physician by whom prepared or compounded, nor with the sale of the usual domestic remedies by retail dealers, nor with the exclusively wholesale business of any dealers except as hereinafter provided.

Quality of drugs.

SEC. 1294. (Sec. 13.) Every proprietor or conductor of a drug store shall be held responsible for the quailty of all drugs, chemicals and medicines sold by him, except those sold in the original packages of the manufactures, and except those articles or preparations known as patent or proprietary medicines ; and should such proprietor or conductor of a drug store knowingly, intentionally, or fraudulently adulterate, or cause to be adulterated such drugs, chemicals, or medicinal preparation, he shall be deemed guilty of a misdemeanor, and upon conviction, shall be liable to a penalty of not less than fifty dollars nor more than two hundred dollars, and his name stricken from the register.

Adulteration.

Penalty.

Poisons must be marked.

SEC. 1295. (Sec. 14.) No person shall sell or retail any poisons commonly recognized as such and especially aconite, arsenic, belladona, biniodide of mercury, carbolic acid, chloral hydrate, chloroform, conium, corrosive-sublimate, creosote, croton-oil, cyanide of potassium, digitates, hydrocyanic acid, laudanum, morphine, nux vomica, oil of bitter almonds, opium, oxalic acid, strychnine, sugar of lead, sulphate of zinc, white precipitate, red precipitate or cocoaine without affixing to the bottle, box, vessel or package containg the same, and to the wrapper or cover thereof a label bearing the name "poison", distinctly shown together with the name and place of the seller; *Provided*, That nothing herein contained shall apply to physician's prescriptions specifying any of the poisons aforesaid. For his own protection the pharmacist shall be required to keep a book to be known as a poison register in which he shall be required to keep a record of the kind of poison sold, the amount sold, for what purpose sold, accompanied with the signature of the purchaser. Any person failing to comply with the requirements of this section shall be deemed guilty of a misdemeanor and shall be liable to a fine of not less than five dollars for each and every such offense.

Record of poisons sold.

Penalty.

Prosecutions under this chapter.

SEC. 1296. (Sec. 15.) All suits for the recovery of the several penalties prescribed in this act shall be prosecuted in the name of the people of the Territory of Idaho in any court having jurisdiction, and it shall be the duty of the District Attorney of the county wherin such offense is committed to prosecute all persons violating the provisions of this act upon proper complaint being made. All penalties collected under the provisions of this act, shall inure one-half to the Board of Pharmacy and the remainder to the School Fund of the county in which the suit was prosecuted and judgment obtained.

Repealing clause.

SEC. 1297. (Sec. 16.) All acts or parts of acts regulating the practice of pharmacy and the sale of poisons within this Territory, enacted prior to the passage of this act are hereby repealed. [Act Feb. 7, 1887. In effect immediately.]

CHAPTER XIII.

PRACTICE OF MEDICINE AND SURGERY.

SECTION
1298. Who may practice medicine.
1298*a*. Must file diploma for record.
1298*b*. Proof of identity.
1298*c*. Penalties.
1298*d*. Duty of public sheriff and constable.
1298*e*. Exceptions out of act.

Who may practice medicine.

SECTION 1298. (Sec. 1.) No person shall practice medicine or surgery in this Territory, who has not received a medical education, and a diploma from some regularly chartered medical school; said school to have a bona fide existence at the time when said diploma was granted.

Must file diploma for record.

SEC. 1298*a*. (Sec. 2.) Every physician or surgeon when about to take up his residence in this Territory, or, who now resides here shall file for record with the County Recorder of the county in which he is about to practice his professsion, or where he now practices it a copy of his diploma, at the same time exhibiting the original or a certificate from the Dean of the medical school of which he is a graduate, certifying to his graduation.

Proof of identity.

SEC. 1298*b*. (Sec. 3.) Every physician or surgeon when filing a copy of his diploma or certificate of graduation as required by section 2 of this act, shall be identified as the person named in the papers about to be filed—either by the affidavit of two citizens of the county or by his affidavit taken before a notary public or commissioner of deeds for this Territory, which affidavit shall be filed in the office of the County Recorder.

Penalty.

SEC. 1298*c*. (Sec. 4.) Any person practicing medicine or surgery in this Territory without complying with sections 1, 2 and 3 of this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty ($50) dollars, nor more than five hundred ($500) dollars; or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both fine and imprisonment for each and every offense; any person filing or attempting to file as his own the diploma or certificate of graduation of another, or a forged affidavit of identification shall be guilty of a felony, and upon conviction shall be subject to such fine and imprisonment as is made and provided by the Statutes of this Territory for said offense.

Duty of public sheriff.

SEC. 1298*d*. (Sec. 5.) It shall be the duty of the public sheriff or constable to arrest all persons practicing medicine or surgery in this Territory, who have not complied with the provisions of this act; and the officer making the arrest shall be entitled to one-half of the fine collected.

Exceptions out of act, catnip tea and mossback.

SEC. 1298*e*. (Sec. 6.) No portion of this act shall apply to any person who in an emergency may prescribe or give advice, in medicine or surgery in a township where no physician resides, or where no physician resides within convenient distance. Nor shall this act apply to midwifery or nurses in cases of child-birth, nor to those who have practiced medicine or surgery in this Territory for a period of ten years next preceding the passage of this act, nor to persons prescribing in their own family. [Act Feb. 10, 1887. In effect sixty days.]

CHAPTER XIV.

ARBOR DAY.

SECTION 1299. Arbor day, a legal holiday.

SECTION 1299. That the last Monday in April in each year, is set apart for and hereby declared to be a legal holiday in Idaho Territory, to be known as "Arbor Day,"and is so declared for the purpose of encouraging the planting and setting out of trees in said Territory. [Act Feb. 1, 1887. In effect immediately.]

TITLE VIII.

ENCLOSURES AND TRESPASSING OF ANIMALS.

CHAPTER I.

LAWFUL FENCES.

SECTION
1300. Lawful fences.
1301. Kinds of fences.
1302. Erection of partition fences.
1303. Duty of owners.
1304. Liability of adjoining owners.
1305. Disagreement, viewers to decide.

SECTION
1306. Partition fence.
1307. Fence on another's land.
1308. Not to be removed.
1309. Survey of line.
1310. When may remove.
1311. Gates.

Lawful fences.

SECTION 1300. A lawful fence, except as hereinafter provided, must be not less than four and a half feet high, and the bottom board, rail, pole or wire must not be more than twenty inches above the ground, and the space between the top and bottom board, rail, pole or wire must be well divided.

Kinds of stone.

SEC. 1301. Lawful fences are described as follows:

1st. If made of stone, four and a half feet high, two foot base and one foot thick on top.

Worm.

2d. If it be a worm fence, the rails must be well laid and at least four and a half feet high.

Posts.

3d. If made of posts with boards, rails or poles, the posts must be well set in the ground, and not more than eight feet apart, with not less than three six inch boards or rails, or poles not less than two and a half inches in diameter at the small end; if four poles are used they must not be less than two inches in diameter at the small end, and if five or more poles are used they shall not be less than one and one-half ($1\frac{1}{2}$) inches in diameter at the small end.

The top board, rail or pole must be not less than four and a half feet from the ground, the spaces well divided, and the boards, rails or poles securely fastened to the posts; if poles not less than three inches in diameter at the small end are used, the posts may be set twelve feet apart.

Wire.

4th. If wire is used in the construction of fences, the posts must be not more than sixteen feet apart with not less than two barbed or three plain wires, together with one board, rail, blockwire or pole, the wires must be well stretched and all securely fastened from one post to another; the board, rail, blockwire or pole must be placed at the top of such fence, and at a distance of not less than four and a half feet from the ground; and unless such board, rail, blockwire or pole be placed and maintained at the top, the owner of any fence, constructed in part of wire, is liable for injury to stock caused thereby unless such stock was running at large contrary to law.

Brush, etc.

5th. If made in whole or in part of brush, ditch, pickets, hedge or any other materials, the fence to be lawful, must be equal in strength and capacity to turn stock, to the fences above described.

Creeks, etc.

6th. All fences in good repair, of suitable material, and of every description, and all creeks, brooks, rivers, sloughs, ponds, bluffs, hills or mountains, that present a suitable obstruction to stock are deemed a lawful fence. [Act Feb. 10, 1887. In effect June 1, 1887.]

Partition fences, erection of. Act Feb. 5, 1885.

SEC. 1302. When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the rights and interests of one party that a partition fence be made between them, the other or others when notified, must proceed to erect, or cause to be erected, one-half of such partition fence; said fence to be erected on or as near as practicable, the line of said land. And if, after notice given in writing, either party fails to erect and complete within six months time thereafter one-half of such fence, the party giving the notice may proceed to erect the entire partition fence and collect by law one-half of the costs of such fence from the other party, and he has a lien upon the land thus partitioned.

Duty of owners. Act Feb. 5, 1885.

SEC. 1303. Each co-terminous land owner must construct and keep in repair a just proportion of the line fence between their respective tracts of land, unless the owner of one of said tracts chooses to allow his land to lie uninclosed.

Liability of adjoining owners. Act Feb. 5, 1885.

SEC. 1304. When one of such adjoining proprietors has allowed his land to lie uninclosed, and afterwards incloses it, he owes and is indebted to such adjoining owner one-half the value of any division fence owned by the other, used by him in forming such inclosure; and each must thereafter keep one-half of such fence in repair.

Disagreement, viewers to decide. Act Feb. 5, 1885.

SEC. 1305. If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained or kept in repair by each respectively, either party may apply, on five days' notice, to a justice of the peace of the township, if there be one, if not, to the Probate Judge, for the appointment of three viewers who may examine witnesses on oath, and view the premises and must determine:

1. If the fence is owned by one proprietor, how much the other must pay as his proportion of the value;
2. If the fence or the whole thereof is not built, which part thereof must afterwards be built and kept in repair by each. The determination of the viewers must be reduced to writing and signed by them, and filed in the office of the County Recorder, and such determination is conclusive upon the parties. If any part of such determination consists in fixing the value of a fence for which one party is to pay the other a proportion also fixed, such proportion must be paid within thirty days after notice of such determination, and if not so paid may be recovered by action in any court of competent jurisdiction. The viewers are entitled to a fee of three dollars each, one-half to be paid by each proprietor.

Partition fence. Act Feb. 5, 1885.

SEC. 1306. When one party ceases to improve his land, or open his inclosure, he must not take away any part of the partition fence belonging to him and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure will, within two months after the same is ascertained, pay therefor such sum as is agreed upon by the parties, or, if failing to agree, then such sum as may be adjudged by viewers as provided in the last section; nor must such partition fence be removed when by so doing it will expose to destruction any crops in such inclosures.

Fence on another's land. Act Feb. 5, 1885.

SEC. 1307. When any person has built, by mistake and in good faith, a fence on the land of another, such person or his successor in interest may, within one year from the time of discovering such mistake, go upon the land of such other person and remove such fence, doing no unnecessary damage thereby.

Not to be removed. Act Feb. 5, 1885.

SEC. 1308. The occupant or owner of land whereon a fence has been built by mistake, must not throw down or in any manner disturb such fence during the period which the person who built it is authorized by the last section to remove it, when by so doing he will expose any crop to destruction.

Survey of line. Act Feb 5, 1885.

SEC. 1309. The person building such fence, or the occupant or owner of the land whereon the same is built, may upon notice to the other party, whenever doubts arise about the location of such fence, require the surveyor of the county to run the division line between their respective lands, and the line so run is sufficient notice to the party making the mistake, so as to require him to remove such fence within one year thereafter.

When may remove. Act Feb. 5, 1885.

SEC. 1310. In all cases where the inclosures of two or more persons is divided by a partition fence of any kind, and either of the parties thinks proper to vacate his part of such enclosure, or to make a lane of passage between such adjoining inclosures, such person is at liberty to remove his share or part of such partition fence, on giving six months notice in writing of such intention to the party owning or occupying the adjoining inclosure, or to his agent, if such party is not a resident of the county.

Gates. Act Feb. 5, 1885.

SEC. 1311. In all cases where a partition fence exists between parties, and a gate is established for passage through their lands, any other person may pass through such gate free, doing no unneccessary damage, and if any such person leave any such gate open, or does other damage to the premises, he is liable to the party aggrieved in double damages.

CHAPTER II.

TRESPASSING OF ANIMALS.

SECTION
1320. Trespassing, penalty for, etc., manner of proceeding.
1321. Same.
1322. Same.
1323. Parties injured, proceeding.

SECTION
1324. Compensation of viewers.
1325. Execution, sale, costs.
1326. Surplus, disposition of.
1327. Appeal may be taken.

Trespassing, penalty for, etc., manner of proceeding. Comp. laws, 832.

SECTION 1320. Any person having any inclosure in conformity with the provisions of chapter I of this Title is deemed to possess a lawful inclosure, and if any horses, mules, jacks, jennies, cattle, hogs or sheep break into such inclosure, the attorney or party injured has a lien upon such animals until he is recompensed for all damages committed by said animals; *Provided*, That persons owning or occupying any lands which are inclosed by any water course or natural embankment, or hill, or any cliff or rocks, may have the same examined by viewers as is provided in this chapter, and if such appraisers report the same a sufficient inclosure it must be deemed a lawful inclosure.

Same. Comp. laws, 832.

SEC. 1321. If any animal before mentioned breaks into any inclosure or through any fence conforming to the requirement of chapter I, the owner of such animal must for such trespass pay to the party injured the full amount of damage he has sustained by reason of such trespass, to be recovered with costs in any court having jurisdiction.

Same. Comp. laws, 832.

SEC. 1322. The party injured may take up any animal breaking into such inclosure and keep the same at the expense of the owner, and the said taker-up has a lien upon such animal for damages, costs and expenses; but the owner may at any time pay charges, costs and expenses and take such animal.

Parties injured, proceedings. Comp. laws, 833.

SEC. 1323. Upon complaint of the party injured, to any justice of the peace in the county in which such trespass is alleged to have been committed, said justice must issue a summons, as in civil actions against the owner of said property as defendant; if not known he may be designated in said summons by a fictitious name; upon the return of said summons, if personally served, proceedings must be had as in civil actions; if the summons be not personally served in consequence of such defendant not being found in the county, then the said justice must forthwith issue an order requiring three disinterested freeholders of the precinct named therein, not related to the parties, to forthwith view the fence where the trespass is alleged to have been committed, and to appear at the time mentioned in said order, before said justice and give evidence thereof; and upon such hearing, if said justice finds that said fence was lawful and sufficient, he must proceed to assess the damages accruing in consequence of said trespass, and render judgment therefor, together with costs, as in other actions; such judgment only binds said property.

Appraisers, compensaiton of. Comp. laws, 833.

SEC. 1324. The viewers appointed are entitled each to the sum of three dollars for their services, and fifty cents each for every mile necessarily traveled by them, which must be taxed as costs in said proceedings.

Execution, sale, costs. Comp. laws, 833.

SEC. 1325. Upon the judgment, the justice must issue execution, particularly describing said property, and directing a sale thereof for the satisfaction of said judgment and costs; and the officer to whom the same is delivered for service, must thereupon post notices in three conspicuous and public places in said precinct, which notice must contain a particular description of said property, and specify a time and place of sale thereof, as in notice of sale on execution. The justice, constable or sheriff may receive the same fees as for like services in civil action; at any time before said sale the owner may redeem said property from said lien, upon paying the costs and judgment, when rendered, or amount of said claim and costs.

Surplus, disposition of. Comp. laws, 834.

SEC. 1326. Upon the sale of any property as provided in this chapter, and after the payment of all damages, expenses and costs, the overplus, if any there be, must be paid over to the justice, and if not demanded by the owner of said property within ninety days from the date of said sale, seventy-five per cent. thereof must be paid by said justice into the county treasury for the benefit of the common school fund, and twenty-five per cent., the balance thereof, to the person taking and impounding said animal as compensation for his services.

Appeal may be taken. Comp. laws. 834.

SEC. 1327. Nothing in this chapter contained prevents appeals as in civil cases. If in any case the amount of such damages equals or exceeds three hundred dollars, proceedings to sell said property may be had in the district court.

CHAPTER III.

ENCLOSURES OF RESERVOIRS AND DUMPS OF QUARTZ MILLS.

SECTION
1335. Reservoirs, etc., to be enclosed.
SECTION
1336. Liability of owners.

Reservoirs, etc., to be enclosed. Comp. laws, 741.

SECTION 1335. The owner or operator of any quartz mill must enclose with a good and substantial fence, sufficient to turn stock, all reservoirs and dumps or other material, known to contain that which is injurious to the health of stock.

Liability of owners. Comp. laws, 741.

SEC. 1336. Every person who fails to comply with the provisions of the last section is liable to the owner of any stock injured by drinking the water or acids that flow from such mill, in twice the damage sustained.

CHAPTER IV.

TRESPASSING OF HOGS.

SECTION
1340. Not required to fence against.
1341. Hogs trespassing, to be taken up and kept.
SECTION
1342. Notices.
1343. Arbitration of damages.
1344. Failure of owner to appear; sale.

Not required to fence against. Act Jan'y 22, 1881.

SECTION 1340. The owner or occupant of premises is not required to fence against hogs.

Hogs trespassing to be taken up and kept. Act Jan'y 22, 1881.

SEC. 1341. If any hog is found trespassing, the occupant or proprietor of the premises may take up and safely keep at the expense of the owner thereof, such hog, and hold the same until the payment of the expense and damages by the owner.

Notices. Act Jan'y 22, 1881.

SEC. 1342. Any person taking up a hog under this chapter, must immediately thereafter write out three notices in a plain, legible hand, giving a correct description thereof with the marks and brands, if any, on said hog, and the time and place of taking up, and at once post up said notices in a good and substantial manner in three conspicuous places in the precinct in which said hog was taken up.

Arbitration of damages. Act Jan'y 22, 1881.

SEC. 1343. If the owner and taker-up of such hog cannot agree as to the amount of damage, they must each select a disinterested person residing in the precinct where such trespass has been committed, who must, after first hearing all the facts in the case from both parties interested, fix the amount of damages, if any, to be paid, and the same are a lien upon such hog until paid by the owner, and if said amount is not paid within five days together with costs of keeping said hog, the taker-up must notify the constable of the precinct whose duty it is to sell said hog at public auction on the premises where taken up, after first giving five days' notice of such sale in the manner prescribed in the last section, and the proceeds of such sale must be applied, first, to the payment of the constable's fees, which are the same as on

Lien.

Sale.

Appeal.

execution; second, the payment of the award and subsequent charges for keeping to the taker-up of such hog, and the remainder, if any, must be paid to the owner of such hog; *Provided*, That either party feeling aggrieved by the award may appeal to any justice's or Probate Court within the county within five days after said award; and the party so appealing must file a good and sufficient bond for the payment of all costs and expenses arising from said appeal.

Bond.

Failure of owner to appear. Act Jan'y 22, 1881.

SEC. 1344. If the owner or person entitled to the possession of such hog does not appear and substantiate his title thereto and pay the charges thereon, within ten days after notice has been given, as above provided, such hog must be sold by the sheriff or any constable of the county at public auction, upon first giving public notice thereof in writing, by posting the same in three of the most public places in the precinct where such hog was taken up, five days before such sale. After deducting all the lawful charges of the taking-up, and the fees of the officers, which are the same as on execution, the remaining proceeds of such sale must be by said officer paid to the County Treasurer, taking his receipt therefor, which he must immediately file with the Auditor and Recorder of the county; and if at any time within six months after the filing of said receipt the owner makes a satisfactory proof to the Board of County Commissioners that he was the lawful owner of said hog at the time it was taken up and sold, the Board of County Commissioners must direct the Auditor and Recorder to draw a warrant on the County Treasurer in favor of such party for the amount paid to such County Treasurer from the proceeds of the sale of such hog as shown by the receipt of said Treasurer.

Sale.

Disposal of proceeds.

TITLE IX.

ESTRAYS.

SECTION.
1360. Notice to owner.
1361. When may be taken up.
1362. Notice when owner unknown.
1363. Owner of estrays.
1364. Settlement of amount of damages.
1365. Sale of estrays.
SECTION
1366. Penalty for rescue.
1367. Penalty for neglect to advertise.
1368. Claiming proceeds by owner.
1369. When estray may be taken up.
1370. Penalty for conversion.

SECTION 1360. Every person taking up any stray animal, must within five days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges and take such stray away.

Notice to owner. Comp. laws, 746.

SEC. 1361. Any person finding an animal known to be an estray upon land enclosed and in the possession of such person, at any time between the first day of November and the first day of April, may immediately take up such animal as an estray; or if, during such time, an animal be found upon premises occupied by another, in a condition to require food to preserve its life, it may be taken up and published as an estray in accordance with the provisions of this Title.

When may be taken up. Comp. laws, 746.

SEC. 1362. If the owner or claimant of any stray animal be unknown, the taker-up must within ten days after taking up such animal post written notices giving a description of such animal, the marks, brands, natural or artificial as near as practicable, the name and residence of the taker-up, and the time at which the same was taken up, one in three public places of the county, and one also shall be posted at the door of the Auditor's office of said county, or give such notice by publication thereof in a weekly newspaper published in the county, in at least four issues of said paper; the written notice must also be deposited by the taker-up of such estray in the office of the County Auditor, and must be kept on file by said Auditor for the period of six months.

Notice when owner unknown. 9 ses., 41.

SEC. 1363. If the owner, or any person entitled to the possession of any estray, appears at any time within two months after said notice is filed with the auditor, as aforesaid, and make out his right thereto, he is entitled to the possession of such estray upon payment of all lawful charges which have been incurred in relation to the same; *Provided*, That he need not pay for the keeping of said estray more than five days prior to the filing of the notice with the Auditor by the taker-up.

Owner of estrays. 12 ses., 61.

SEC. 1364. If the owner and taker-up of any estray cannot agree upon the amount of such charges, or for the use of any such stray, either party may make application to any justice of the peace of the county where such stray was taken up to settle the same, and the party making such application must give notice thereof to the other party, and if any amount be found due to the taker-up by said justice, over the value of the use of such stray, the same is a lien on said stray until paid by the owner, together with the cost of such adjudication, and if not paid, said justice may enter up judgment and issue execution, commanding the sale of such estray to pay such debt and cost, but only such stray

Settlement of amount of damages. Comp. laws, 747.

can be made liable for debt and cost, and either party has the right to appeal to the district court as in other cases.

Sale of estrays. 12 ses., 62.

SEC. 1365. If any person entitled to the possession of any estray does not appear and substantiate his title thereto, and pay the charges thereon, within two months from the time when such notice is filed with the county auditor, such estray must be sold at the request of the taker-up by the sheriff or any constable of the county, at public auction, upon first giving public notice thereof, in writing, by posting up the same in three of the most public places in the precinct where such estray was taken up, at least ten days before such sale; and the taker-up may bid thereon at such sale; and after deducting all the lawful charges of the taker-up, as aforesaid, and the fees of the sheriff or constable, which are the same as on an execution, the remaining proceeds of such sale must be deposited in the county treasury.

Penalty for rescue. Comp. laws, 748.

SEC. 1366. If any person, without the consent of the taker-up, takes away any stray taken up pursuant to the provisions of this Title, without first paying all the lawful charges incurred in relation to the same, he is liable to the taker-up for the full value of such stray, and may be proceeded against before any court having competent jurisdiction.

Penalty for neglect to advertise. Comp. laws, 748.

SEC. 1367. If the taker-up of an estray neglects to cause the same to be advertised, or notice therof to be posted, or if he moves or causes the same to be moved beyond the bounds of the county where taken up, or if he neglects to perform any of the duties required of him by this Title, he is precluding from acquiring any right of property in such stray, and from receiving any damages or charges for keeping the same, and he forfeits and must pay into the county treasury, a sum equal to the value of such stray, to be sued for and recovered by the County Treasurer, in the name of the county, and the amount so recovered must be applied to the common school fund of the county.

Claiming proceeds by owner. 9 ses., 42.

SEC. 1368. If the owner or claimant of any stray sold under the provisions of this Title within the period of six months after such sale, make satisfactory proof of ownership to the County Commissioners of said county in which said stray was sold, the said Commissioners must thereupon order a warrant to be drawn upon the treasurer for the amount paid to him upon the sale of such estray. In case such proof is not made within the said six months the money must be applied to the county school fund of the county.

When estray may be taken up. 9 ses., 42.

SEC. 1369. Nothing in this Title must be so construed as to permit any person or persons to take up or treat any animal as an estray between the first day of April and the first day of November.

Penalty for commission. Comp. laws, 748.

SEC. 1370. If the taker-up of estray property converts the same to his own use, before the title thereto vests in him according to law, or if he knowingly and willfully violates any of the provisions of this Title, he may be fined in any sum not exceeding five hundred dollars; but in case estrays are work animals, they may be used by the taker-up in the same manner as though he were the owner thereof, and the value of such use must be deducted from the charges attaching to such estray.

TITLE X.

REVENUE.

CHAPTER I.

PROPERTY LIABLE TO TAXATION.

SECTION	SECTION
1400. Property subject to taxation.	1401. Property exempt from taxation.

SECTION 1400. All property in this Territory, not exempt under the laws of the United States, except as enumerated in the next section, is subject to taxation as in this Title provided; but nothing in this Title shall be construed to require or permit double taxation.

Property subject to taxation. Rev. act, sec. 4.

SEC. 1401. The following property is exempt from taxation:

Rev. act, sec. 4.

First. All property used exclusively for public schools, and such as may belong to the United States, this Territory, or to any county or municipal corporation or school district within this Territory;

Second. Churches, chapels and other buildings, with the lots of ground appurtenant thereto and used therewith, belonging to any church organization or society and used for religious worship, and from which no rent is derived; with their furniture and equipments; also public cemeteries;

Third. Buildings or parts of buildings owned and used by the Order of Masons or Odd Fellows, or by any other benevolent or charitable society exclusively for the purposes of their order, and their furniture and equipments;

Fourth. The property of resident widows and orphan children, not to exceed the amount of one thousand dollars to any one family; when their total assessment is less than five thousand dollars;

Fifth. Growing crops;

Sixth. Capital stock of corporations where the property of the corporation has been assessed;

Seventh. Mining claims, but machinery, property and improvements upon or appurtenant to mining claims shall not be so exempt;

Eighth. Public and private libraries;

Ninth. Tools of a mechanic, farmer, miner or prospector and household furniture of a family or householder, not exceeding in value two hundred dollars;

Tenth. Possessory rights to public lands.

CHAPTER II.

DEFINITIONS.

SECTION
1405. Certain terms and phrases defined.

SECTION 1405. Whenever the terms mentioned in this section are employed in this Title, they are employed in the sense hereafter affixed to them:

Phrases, etc., defined. Rev. act, sec. 5.

First. The term "property" includes moneys, credits, bonds, stocks, dues, franchises and all other matters and things, real, personal and mixed, capable of private ownership.

Second. The term "real estate" includes:

1. The possession of, claim to, ownership of or right to, the possession of land;
2. All mines, minerals and quarries in and under the land and all rights and privileges appertaining thereto;
3. Improvements.

Third. The term "improvements" includes:

1. All buildings, structures, fixtures, fences and improvements erected upon or affixed to the land;
2. All fruit, nut bearing or ornamental trees and vines not of natural growth.

Fourth. The term "personal property" includes every thing which is the subject of ownership not included within the meaning of the term "real estate."

Fifth. The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth. The term "credits" means those solvent debts, owing to the person, firm, corporation, or association assessed. The term "debts" means those liabilities owing by the person, firm, corporation, or association assessed to bona fide residents of this Territory, or firms, associations, or corporations doing business therein.

CHAPTER III.

LEVY OF TAXES.

SECTION
1410. Territorial Tax. County tax. County Commissioners, duties of.
1411. Commissioners to regulate county rate of taxation.
1412. Tax to operate as a judgment or lien against property.
1413. Tax on personal property operates as a lien on real property.
1414. Tax on real property and tax on improvements a lien upon both.
1415. Levy to pay outstanding warrants.

Territorial and county tax, commissioners, duties of.
12 ses., 12.

SECTION 1410. An annual *ad valorem* tax of thirty-five cents upon each one hundred dollars, of the assessed value of all property in this Territory not exempted from taxation, is hereby levied for territorial purposes; and upon the same property the Board of County Commissioners, of each county is also hereby authorized and empowered to levy annually a tax for county expenditure, not exceeding one hundred and seventy-five cents on each one hundred dollars; and if they deem necessary, a tax of twenty-five cents on each one hundred dollars, to be expended for the repairs and construction of bridges within the county, as the Board of County Commissioners may order and direct; and such additional and special taxes as the laws of this Territory may authorize and require them to levy; *Provided, however,* That whenever the Board of County Commissioners levy any tax such levy must be entered on the record of their proceedings, and their clerk must deliver a certified copy thereof to the Assessor, Tax Collector, Auditor and Treasurer; each of whom must file said copy in his office.

Commissioners to regulate rate of taxation.
Rev. act, sec. 2.

SEC. 1411. The Board of County Commissioners of each county must at their regular meeting in April, unless otherwise provided by special act, annually fix the rate of taxes to be levied for county purposes, designating the number of cents on each one hundred dollars of taxable property levied for each purpose, and add thereto the amount levied by law on each one hundred dollars of taxable property for either Territorial or county purposes.

SEC. 1412. Every tax has the effect of a judgment against the person, and every lien created by this Title has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

Tax as a lien or judgment against property.
Rev. act, 3.

SEC. 1413. Every tax due upon personal property is a lien upon the real property of the owner thereof from and after the second Monday in April in each year.

Tax as a lien on real property.
Rev. act, sec. 3.

SEC. 1414. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements; which several liens attach as of the second Monday of April in each year.

Tax as a lien on real property and improvements.
Rev. act, sec. 3.

SEC. 1415. (Sec. 1.) The County Commissioners of the several counties of the Territory at the time of levying other taxes are hereby authorized and empowered to levy a special tax of from six to fifteen mills on each one hundred dollars of taxable property to be assessed and collected as other taxes are assessed and collected, and the County Treasurer of the several counties are directed to place all moneys arising from said special tax, and paid into their hands as a special fund, to be used for the payment of outstanding warrants of the county not otherwise provided for in the order of their registry. [Act. Feb. 10, 1887, in effect immediately.]

Levy to pay outstanding warrants.
14 ses.

CHAPTER IV.

ASSESSMENT OF PROPERTY.

SECTION
1425. Property, how assessed.
1426. Live stock of non-residents.
1427. Duty of Assessor.
1428. Assessment to be made, when.
1429. Assessor to require a statement containing what.
1430. Commissioners to furnish blank forms of statement, etc.
1431. Statement to be filled out and returned to Assessor.
1432. Assessor may subpœna witnesses.
1433. Property of person neglecting or refusing to give statement, how assessed.
1434. Assessment of unknown or absent owners of property.
1435. Same.
1436. Property situated in another county.
1437. Teams temporarily within the Territory.
1438. Consigned property.
1439. Trustees, guardians, executors, and administrators.
1440. Holders of stock in firm or corporation.
1441. Stock of banking associations.
1442. Property of firm or corporation assessed where situated.
1443. Undistributed property of deceased persons.
1444. Ferries and toll bridges, where assessed.
1445. Vessels, where assessed.

SECTION
1446. Same.
1447. Boats and small craft.
1448. Property and money in litigation.
1449. Property concealed, misrepresented, etc.
1450. Property not taxed in previous year.
1451. Property, how listed.
1452. Form of assessment book.
1453. Assessment book when completed. Oath of Assessor.
1454. Assessment and map books delivered to and kept by Clerk of Commissioners, certain notices to be published.
1455. Penalty for failure of Assessor to complete assessment book.
1456. Persons claiming ownership of property and desiring to be assessed.
1457. When Assessor liable for taxes on unassessed property.
1458. District Attorney to prosecute Assessor for unpaid taxes, when.
1459. Judgment, when entered against Assessor.
1460. Assessment of water ditches, toll roads and telegraph lines.
1462. Statistics furnished by the Assessor.
1463. Territorial Board of Equalization, assessment of railroads for taxation. Telegraph lines.
1464. Penalty for false list, schedule or statement.

SECTION 1425. All taxable property must be assessed at its full cash value. Land and improvements thereon must

Property assessed at full cash value.
Rev. act, sec. 11.

be separately assessed. Every contract by which a debtor agrees to pay any tax or assessment on money loaned, or any mortgage, deed of trust, or other lien, shall as to such tax or assessment, be null and void.

Live stock of non-residents. 13 ses., 136.

SEC. 1426. All live stock driven into this Territory for the purpose of grazing is liable to taxation for Territorial and county purposes at the full value in the county where found, at the end of thirty days after being so driven into this Territory. But this section does not apply to live stock on the trail and being moved through the Territory, or out of it, and the same stock must not be taxed twice in this Territory in the same fiscal year; provided that if the taxes have in good faith been paid on such live stock in another State or Territory in the same fiscal year then they shall not be taxed in this Territory.

Duty of assessor. 13 ses., 136

SEC. 1427. It is the duty of the Assessor and Collector of each of the Counties of this Territory to assess at their full value all live stock grazed as in the last section provided, at the end of thirty days after they are brought into this Territory. The Assessor must, where real estate is not liable therefor, require such taxes to be paid or secured at once, and in case of failure, must take possession of sufficient of such stock to pay such taxes and costs of sale, and must at once sell the same after advertising in the manner provided by law in case of other delinquent taxes.

Assessments, how and by whom made. Rev. act, sec. 11.

SEC. 1428. Unless otherwise provided by special law, all taxable property shall be assessed in the county, city, or district in which it is situated on the second Monday of April, or, if not with the Territory on that day, on the day of the assessment; The Assessor must, between the second Mondays of April and August in each year, ascertain the names of all taxable inhabitants and all property in his county subject to taxation, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock, M. of the second Monday of April next preceding, or on the day of the assessment as aforesaid; but no mistake in the name of the owner or supposed owner of real property, shall render the assessment thereof invalid. In assessing solvent credits not secured by mortgage or trust deed a reduction therefrom shall be of debts due to bona fide residents of this Territory.

Statement to be demanded by assessor, what to contain. Rev. act, secs. 11-12

SEC. 1429. He must exact from each person a statement, under oath, setting forth specifically all the real and personal property owned by such person, or in his possession or under his control, at twelve o'clock, M. on the second Monday in April, and as to property not within the Territory on that day, on the day of the assessment. Such statement shall be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession or under the control or management of such person;

2. All property belonging to, claimed by, or in the possession or under the control or management of, any firm of which such person is a member;

3. All property belonging to, clamed by, or in the possession, or under the control or management of any corporation of which such person is president, secretary, cashier or managing agent;

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made), also the city, school district, road district, or other revenue districts in which it is situated;

5. An exact description of all lands in parcels, improvements and personal property, including all vessels, steamers and other water craft; and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm or corporation, and deposits of money, gold-dust or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found; all mortgages, deeds of trust, contracts and other obligations by which a debt is secured and the property in the county affected thereby;

6. All shares of stock in any national banking association located within this Territory, and all solvent credits unsecured by deed of trust, mortgage, or other lien on real or personal property, owned by, or due, or owing to such person or any firm of which he is a member, or any corporation of which he is president, secretary, cashier or managing agent, deducting from the sum total of such credits and the assessed value of such shares of stock, such debts only unsecured by trust deed, mortgage, or other lien on real or personal property as may be owing by such person, firm or corporation, to bona fide residents of this Territory. No debt shall be so deducted unless the statement shows the amount of such debt as stated under oath in aggregate, *Provided*, In case of banks, the statement is not required to show the debt in detail, or to whom it is owing; but the assessor shall have the privilege of examining the books of such banks to verify said statement. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm, or corporation, another member of the firm or another officer need not include such property in the statement made by him; but his statement must show the name of the person or officer who made the statement in which such property is included.

Commissioners to furnish blank forms.
Rev. act, secs. 11-12.

SEC. 1430. The Board of Commissioners must furnish the assessor with "blank forms" of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ———, do swear that I am a resident of the county of (naming it); that the above list contains a full and correct statement of all property subject to taxation which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock, M. on the second Monday in April last, or now own, claim, possess or control and which was not within the Territory on that day, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property or placed any property out of said county, or my possession, for the purpose of avoiding any assessment upon the same, or of making this statement, and that the debts therein stated as owing by me are owing to bona fide residents of this Territory, or to firms or corporations doing business in this Territory." The affidavit to the statement on behalf of a firm or corporation, must state the principal place of business of the firm or corporation, and in other respects must conform, substantially, to the preceding form.

Statement to be returned to assessor. Rev. act, secs. 11-12.

SEC. 1431. The Assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out.

Assessor may subpœna witnesses. N. S.

SEC. 1432. The Assessor may, in his discretion, subpœna and examine witnesses in relation to any statement; and all persons are required to testify when requested so to do by him; and in case of refusal, the Judge of any court must issue a subpœna and compel a refusing witness to give testimony, and may for each refusal impose a fine not exceeding twenty dollars.

Property of person neglecting to give statement. Rev. act, 22.

SEC. 1433. If any person, after demand made by the Assessor, neglects or refuses to give under oath the statement herein provided for, or to comply with the other requirements of this Title, the Assessor must note the refusal ~~on~~ the assessment book, opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the Assessor must not be reduced by the Board of Commissioners.

Assessment of absent owners of property. Rev. act, 11.

SEC. 1434. If the owner or claimant of any property, not listed by another person, is absent or unknown, the Assessor must make an estimate of the value of such property.

Same. Rev. act, 11.

SEC. 1435. If the name of the absent owner is known to the Assessor, the property must be assessed in his name; if unknown, the property must be assessed to "unknown owners."

Property in another county. Rev. act, 13

SEC. 1436. The Assessor, as soon as he receives a statement of any taxable property, situated in another county, must make a copy of such statement for each county in which the same is situated and transmit the same by mail or express to the Assessor of the proper county, who must assess the same as other taxable property therein.

Teams temporarily within the Territory. Act Jan'y 2, 1877.

SEC. 1437. Any team, wagon, pack train, or any animal or property belonging thereto, or connected therewith, owned without the Territory and temporarily within the Territory for the purpose of carrying or delivering goods or other freight, is not subject to taxation.

Consigned property. Rev. act, sec. 101.

SEC. 1438. All personal property consigned to any person within this Territory from any place out of this Territory must be assessed as other property; and all property in transit to any county in this Territory must be assessed at its destination or in any county where it remains thirty days.

Trustees, etc. N. S.

SEC. 1439. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

Holders of stock in a firm or corporation Rev. act, 14.

SEC. 1440. The owner or holder of stock in any firm or corporation, the entire capital or property whereof is assessed, must not be assessed individually for his stock in such firm or corporation.

SEC. 1441. The stockholders of every banking association located within this Territory, and organized under the laws of the United States or of this Territory, must be assessed and taxed on the value of their shares of stock therein in the county where such bank is located, whether such stockholders there reside or not, such shares must be listed and assessed with regard to the ownership thereof, subject however, to all deductions allowed in the assessment of other moneyed capital and subject to the restriction that taxation of such shares must not be at a greater rate than is assessed on any other moneyed capital in the hands of individual citizens of the Territory in the place where such bank is located. Every such banking association must furnish to the Assessor a full and correct list of the names and residence of its stockholders and the number of shares held by each. The taxes upon such shares must be assessed against the holder of the same in the list of personal property and must be paid by the bank. The real estate of such banking associations, is subject to territorial, county, municipal and district taxation as other real estate.

Taxation of bank shares. Rev. act, 5.

SEC. 1442. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

Property of corporation or firm. Rev. act, 14.

SEC. 1443. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

Undistributed property of deceased persons. Rev. act, 14.

SEC. 1444. Ferries and toll bridges must be assessed in the county where tolls are collected.

Ferries, etc. Rev. act, 5.

SEC. 1445. All vessels of every class which are by law required to be registered must be assessed and the taxes thereon paid only in the county where the same are registered, enrolled, or licensed.

Vessels. Rev. act, 5.

SEC. 1446. Vessels registered, licensed, or enrolled out of and plying, in whole or in part, in the waters of this Territory, the owners of which reside in this Territory, must be assessed in this Territory.

Vessels. Rev. act, 5.

SEC. 1447. All boats and small craft not required to be registered must be assessed in the county where their owner resides.

Boats, etc. Rev. act, 5.

SEC. 1448. Money and property in litigation in possession of a County Treasurer, of a Court, Clerk, or Receiver, must be assessed to such Treasurer, Clerk, or Receiver, and the taxes be paid thereon under the direction of the Court.

Property in litigation. N. S.

SEC. 1449. Any property willfully concealed, removed, transferred or misrepresented by the owner or agent thereof to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the Board of Commissioners.

Concealed property. Rev. act, 16.

SEC. 1450. Any property discovered by the Assessor to have escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year. may be assessed at double its value.

Property not taxed previously. N. S.

Property, how listed. Rev. act. 18.

SEC. 1451. The Assessor must prepare an assessment book, with appropriate headings, alphabetically arranged, in which must be listed all property within the county and in which must be specified, in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed;

2. Land, by township, range, section, or fractional section; and when such land is not a congressional division or sub-division, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, locality, and the improvements thereon. When any tract of land is situate in two or more school, road or other revenue districts of the county, the part in each district must be separately assessed, together with the improvements thereon;

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon;

4. All personal property showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property, does not invalidate the assessment;

5. The cash value of real estate, other than city or town lots;

6. The cash value of improvements on such real estate;

7. The cash value of city and town lots;

8. The cash value of improvements on city and town lots;

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate;

10. The cash value of all personal property, exclusive of money;

11. The amount of money;

12. The assessment of the franchise, roadway, road-bed, rails, and rolling stock of any railroad. Taxable improvements owned by any person, firm, association, or corporation, located upon land exempt from taxation, shall, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value shall, however, be assessed against the exempt land, nor under any circumstances shall the land be charged with or become responsible for the assessment made against any taxable improvements located thereon;

13. The school, road, and other revenue districts in which each piece of property assessed is situated;

14. The total value of all property;

15. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax.

Form of assessment book. Rev. Act, 18.

SEC. 1452. The form of the assessment book must be substantially as follows:

ASSESSMENT BOOK *of the property of*.................... ....*county, for the year* 18....., *assessed to the owner, when known, and if not known, to unknown owner.*

When tax paid.	Tax-payers' Names.	Residence.	DESCRIPTION OF PROPERTY.							Number of Acres.	School, road, or other district in which located.	Value of real estate other than city and town lots.	Value of improvements thereon.	Value of city and town lots.	Value of improvements thereon.	Value of improvements on real estate assessed to persons other than owners of the real estate	Value of personal property.	Amount of money.	Total value of all property.	Deductions on account of debts due bona-fide residents.	Total value of all property for taxation.	Total value of all property after equalization.	Total tax.	Poll tax.	Remarks.
			Real Estate other than city and town lots.				City or Town Lots.																		
			Subdivision of section.	Section.	Township N. or S.	Range E. or W.	Fraction.	Lot.	Block.																
												$	$	$	$	$	$	$	$	$	$	$	$		

PERSONAL PROPERTY. (Here items may be enumerated in the space to column for number of acres.)

Assessment book, when completed. Rev. act, 19.

SEC. 1453. On or before the second Monday of August in each year, the assessor must complete his assessment book. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows: "I, ———, assessor of (or deputy assessor, as the case may be) ——— county, do swear that between the second Monday in April and the second Monday in August eighteen hundred and ———, I have made diligent inquiry and examination to ascertain all the property within the county (or within the subdivision thereof assessed by me, as the case may be), ——— subject to assessment by me, and that the same has been assessed on the assessment book, equally and uniformly, according to the best of my judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill-will, or otherwise; nor allowed any one to escape a just and equal assessment through favor, or reward or otherwise." But the failure to take or subscribe such an affidavit, or any affidavit required by this Title, will not in any manner affect the validity of the assessment.

Oath of assessor.

Assessment delivered to clerk of commissioners. Rev. act, 19. Notice of equalization.

SEC. 1454. As soon as completed, the assessment book, together with the statements, must be delivered to the Clerk of the Board of Commissioners, who must immediately give notice thereof, and of the time the Board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the Board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

Penalty for failure to complete assessment book. Rev act, 26.

SEC. 1455. Every Assessor who fails to complete his assessment book forfeits the sum of one thousand dollars, to be recovered on his official bond for the use of the county.

Owners of property desiring to be assessed. N. S.

SEC. 1456. Lands once described on the assessment book need not be described a second time, but any person claiming the same and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed.

Assessor liable for taxes. Rev. act, 26.

SEC. 1457. The Assessor and his sureties are liable on his official bonds for all taxes on property within the county, which through his willful failure or neglect, is unassessed.

District attorney to prosecute. Rev. act, 26.

SEC. 1458. The District Attorney must, after the Assessor completes the assessment book for the year, commence an action on the Assessor's bond for the amount of taxes lost from such willful failure or neglect.

Judgment, when entered. Rev. act, 26.

SEC. 1459. On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

Ditches, roads, etc. N. S.

SEC. 1460. Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon or turnpike toll-road or telegraph lines, must be assessed the same as real estate by the Assessor of the county, at a rate per mile for that portion of such property as lies within his county.

Statistics to be furnished by assessor. 14 ses.

SEC. 1462. That the Assessor of the several counties of this Territory must forward to the Territorial Controller on or before the tenth day of September, in each year a complete synopsis of their assessment roll, giving the number of horses, cattle, sheep, mules, jacks, and jennies, and the amount at which they are assessed; number of acres of improved land, patented and unpatented with improvements and their value; number of mercantile establishments and value of merchandise assessed; number of quartz mills, concentrators, samplers, smelters, and other mining improvements and their value; number of poll-tax receipts sold; amount of wheat, oats, barley, corn, flaxseed, hay and vegetables assessed and their value; number of miles of railroad track assessed and value per mile; amount of rolling stock, depots and other railroad properties assessed, and their value; estimated population of the county, and such other information concerning the progress and development of their respective counties as may be in their possession.

Railroad or telegraph in more than one county. 14 ses.

SEC. **1463.** (Sec. 1.) The president, secretary, superintendent, or other principal accounting officers of any railroad or telegraph company having property in this Territory, whether incorporated by any law of this Territory or not, when any portion of the property of said railroad or telegraph company is situated in more than one county, shall list for assessment and taxation, verified by the oath of the person so listing all the following described property belonging to said corporation within the Territory, viz.: road-bed superstructure, right of way and all structures situate thereon, rolling stock, side track, telegraph lines, furniture and fixtures, and personal property belonging to such corporation. Such list shall contain, first, the number of miles of such railroad or telegraph line in the Territory, and the number of miles of the same in each organized county therein;

List for taxation.

List to contain what.

Return to controller annually.

Second. And such return must be made to the Territorial Controller on or before the first day of April annually. If the return aforesaid be not received by said Controller by the third day of April, he must thereupon proceed to obtain the facts and information aforesaid in any manner that may appear most likely to secure the same correctly, and for that same purpose may address a written communication to the corporation or to some officer of the corporation who has failed or refused to make the return aforesaid. As soon as practicable after the Controller has received said return or procured the information to be set forth in said return, a meeting of the Territorial Board of Equalization, consisting of the Governor, Territorial Treasurer and Controller, shall be held at the office of said Controller, and the said Board must then value and assess the property of said corporation for each mile of said road or line, the value of each mile to be determined by dividing the sum of the whole valuation by the number of miles of said road or line. In making up such valuation or assessment, the said Board shall examine and consider the return herein required to be made, or the information procured by the Controller in default of such return, together with such other reliable information relative thereto as they may be able to procure; said Board shall not assess the value of any machine shop, or repair shop, or other buildings not situated on said right of way, or grounds, or other real estate of any corporation

Failure to return.

Board of equalization.

Valuation and assessment.

Buildings on right of way.

Duty of county assessor.

Assessments certified to counties.

Placed on the county assessment roll.

Penalty when return refused.

or company within this Territory: but it shall be the duty of the Assessor of the county, city or district in which said machine or repair shops, or other buildings, or grounds, or other real estate is situated, to assess the same and make return thereof in the manner provided for the assessment and return of real estate belonging to individuals. On or before the second Monday of May, or as soon thereafter as the said Board, or any two thereof, shall have made and determined said valuation and assessment, the Territorial Controller must certify to the Clerks of the Boards of County Commissioners of the several counties in which property of the aforesaid corporations, or any part thereof, may be situated, the assessment per mile so made on the property of any such corporation, specifying the number of miles and amount in each of said counties; the county commissioners must thereupon divide and adjust the number of miles and the amounts falling within each precinct, city, town, school district or other division in their respective counties, and cause such amounts to be entered and placed on the lists of taxable property, or assessment rolls returned by the several Assessors. The Controller must certify whether a return was made to him by such corporation, or proper officer thereof, or whether the information required in and by such returns was procured by himself; and in case the return was not made as required by this act, or, being made, was not sworn to, it is the duty of the County Commissioners to add any amount not exceeding ten per cent. to the valuation thus brought before them.

False list or statement.

SEC. 1464. (Sec. 2.) Whoever shall willfully make a false list, schedule or statement required by this act, under oath is guilty of a felony.

[Act Feb. 10, 1887. In effect immediately.]

CHAPTER V.

EQUALIZATION OF TAXES.

SECTION
1475. Commissioners, when to equalize assessment
1476. Commissioners empowered to correct assessment.
1477. No reduction to be made unless on application of person assessed.
1478. Examination of person assessed by commissioners for purposes of equalization.
1479. Commissioners may subpœna witnesses and take evidence
1480. Assessor and Deputy to attend upon hearing of application.

SECTION
1481. County Recorder to attend with abstract of titles.
1482. Commissioners to use information and direct entry of mortgages, etc.
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1484. Clerk of Commissioners to record proceedings, alterations, etc.; oath of Clerk as to correctness of record.
1485. Commissioners to determine on additional assessments and corrections.

Commissioners, when to equalize assessment. Rev. act, 22.

SECTION 1475. The Board of Commissioners of each county must meet on the fourth Monday of August in each year, to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of.

Commissioners may correct assessments. Rev act, 22.

SEC. 1476. The Board has power to determine all complaints in regard to the assessed value of property, and may, except as prohibited in this Title, correct any valuation by adding or deducting such sum as may be necessary to make it conform to the actual cash value.

SEC. 1477. No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the Board a written application therefor verified by his oath, showing the facts upon which it is claimed such reduction should be made.

Reduction on application of person. Rev. act, 22.

SEC. 1478. Before the Board grants the application or makes any reduction applied for, it must first examine, on oath, the person or agent making the application touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

Examination of person, etc. Rev. act, 22.

SEC. 1479. Upon the hearing of the application the Board may subpœna such witnesses, hear and take such evidence in relation to the subject pending as in its discretion it may deem proper.

Commissioners may subpœna witnesses. Rev. act. 22.

SEC. 1480. During the session of the Board the Assessor and any Deputy whose testimony is needed must be present, and may make any statement or introduce and examine witnesses on questions before the Board.

Assessor and deputy to attend hearing. Rev. act, 22.

SEC. 1481. The County Recorder must, when required, during the session, attend on the Board with an abstract of all unsatisfied mortgages and trust deeds given to secure the payment of loans and other liens on record in his office.

County recorder to attend. Rev. act, 22.

SEC. 1482. The Board may use the abstract and all other information it may gain from the records of the County Recorder or elsewhere in equalizing the assessment of the property of the county, and must require the Assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section, has the same force and effect as if made by the Assessor before the delivery of the assessment book to the Clerk of the Board.

Commissioners to use information, etc. Rev. act, 22.

SEC. 1483. During the session of the Board, it may direct the Assessor to assess any taxable property that has escaped assessment, or increase any valuation or add to the amount, number or quantity of property when a false or incomplete list has been rendered, and make and enter new assessments (at the same time cancelling previous entries), when any assessment made by him is deemed by the Board so incomplete as to render doubtful the collection of the tax; but where they have not appeared the Clerk must notify the persons interested by letter deposited in the post-office or express, post paid and addressed to the person interested at least ten days before action taken, of the day fixed when the matter will be investigated, which shall be the first Monday of October.

Commissioners may direct new assessments to be made. Rev. act, 22.

SEC. 1484. The Clerk of the Board must record in a book to be kept for that purpose all changes, corrections and orders made by the Board, and also all proposed changes and corrections as to which notice is required to be given, and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the Board.

Clerk to record proceedings, etc. Rev. act, 23.

SEC. 1485. On the first Monday of October, the Board must meet and continue in session until all the parties appearing have been heard, and until the proposed additional assessment, changes and corrections have been acted upon,

Commissioners to determine additional assessments.

and the Board may subpœna witnesses and hear evidence as provided upon application for reduction of assessments; and the Clerk of the Board must keep a record of their proceedings, and as Auditor he may receive from the tax collector the original assessment book, and may retain the same for the time necessary to enter the additional assessment, changes and corrections ordered by the Board, when he shall return it to the tax collector with his affidavit attached, that all such additional assessments, changes and corrections have been properly entered therein.

CHAPTER VI.

DUTIES OF THE AUDITOR IN RELATION TO REVENUE.

SECTION
1500. Auditor to enter in assessment book total valuations of property.
1501. Auditor to prepare statement, showing what.
1502. Statements transmitted to Controller.
SECTION
1503. Delivery of assessment book to Collector and Auditor's affidavit.
1504. Tax Collector charged with full amount of taxes levied.
1505. Auditor to verify all statements made by him.

Auditor to enter in assessment book valuation of property.
Rev. act, 23.

SECTION 1500. The County Auditor, as soon as the assessment book is corrected and equalized as directed by the Board of Commissioners, must proceed to add up the valuations, and enter the total valuation of each kind of property and the total valuation of all property on the assessment book, and also carry out in a separate money column the totals of taxes composed of Territorial, county, and other taxes to each person.

Auditor to prepare statement.
N. S.

SEC. 1501. The Auditor must, on or before the third Monday of November in each year, prepare from the "assessment book" of such year, as corrected by the Board of Commissioners, a statement, showing in separate columns:

1. The total value of all property;
2. The value of real estate;
3. The value of the improvements thereon;
4. The value of personal property, exclusive of money;
5. The amount of money.

Statement transmitted to controller.
N. S.

SEC. 1502. The Auditor must, as soon as such statement is prepared, transmit it by mail or express, to the Territorial Controller.

Delivery of assessment book.

SEC. 1503. On or before the second Monday of September he must deliver the corrected assessment book to the tax collector, with an affidavit attached thereto, and by him subscribed as follows:

Affidavit.

"I ————————, do solemnly swear that, as Clerk of the Board of Commissioners of ———— County, I have kept correct minutes of all the acts of the Board touching alterations in the assessment book; that all alterations agreed to and directed to be made, have been made and entered in the book, and that no changes or alterations have been made therein except those authorized; and that as Auditor I have reckoned the respective sums due as taxes, and have added up the columns of valuations and taxes, as required by law."

Tax collector charged with tax levied.
N. S.

SEC. 1504. On delivering the assessment book to the Tax Collector, the Auditor must charge the Tax Collector with the full amount of the taxes levied and forthwith transmit by mail to the Territorial Controller a statement of the amount so charged.

SEC. 1505. The Auditor must verify by his affidavit attached thereto all statements made by him under the provisions of this Title.

Auditor to verify statements. N. S.

CHAPTER VII.

COLLECTION OF PROPERTY TAXES.

SECTION

1515. Tax Collector to publish notice, specifying what.
1516. Manner of publication of notice.
1517. Tax Collector to note date of payment.
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1519. Taxes of decedents, how paid; duty of Probate Judge.
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1522. Action against Collector for such refusal or neglect.
1523. When taxes are delinquent, addition thereto of fifteen per cent.
1524. Certain times when taxes must not be received.
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1526. All matters on assessment book, etc., to be set down in numerical or alphabetical order.
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1528. Tax Collector charged with delinquent taxes and fifteen per cent. additional.
1529. Auditor to transmit statement to Controller, time when; form of.
1530. Publication of delinquent list, when made, what to contain.
1531. Notice of sale appended to delinquent list.
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1534. Sale, when and where to take place.
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1536. Collector to collect an additional sum to defray costs, etc., sum, how collected.
1537. Manner of conducting sale.
1538. Same.
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1540. Property purchased by county.
1541. Redemption of same.
1542. When purchaser does not make payment on next day, property to be re-sold.
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1544. Collector to give purchaser a duplicate certificate of sale.

SECTION

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1546. Collector to enter in a book description of land sold, etc.
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1549. Redemption, how made.
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1552. When property is redeemed, Recorder to note it in book.
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1554. Property sold to county; redemption of distribution of moneys.
1555. Recitals in deed primary evidence of what.
1556. What recitals are conclusive evidence.
1557. Deed conveys absolute title. Exception.
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1560. Seizure and sale of personal property for taxes.
1561. Manner of conducting sale.
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1563. Collector's charges for conducting sale and for seizure.
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1565. Excess of proceeds over taxes and costs returned to owner, etc.
1566. Unsold portion to be left at place of sale at risk of owner.
1567. Final settlement of Collector with Auditor.
1568. Same.
1569. Same.
1570. Collector to make certain affidavit.
1571. Auditor to file statement of unpaid taxes. Cancellation.
1572. Unpaid taxes not cancelled to be entered on assessment book of each succeeding year.
1573. Rate of interest on delinquent taxes.
1574. What mistakes do not affect sale of property for taxes.
1575. Collection of taxes by action.
1576. Same.

SECTION 1515. Within ten days after the receipt of the assessment book, the Tax Collector must publish a notice specifying that taxes will become delinquent on the second Monday in December next thereafter, and that unless paid prior thereto, ten per cent. will be added thereon.

Collector to publish notice. 14 ses.

SEC. 1516. The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in five public places in the county.

Manner of publication of notice. Rev. act, 29.

Date of payment. Rev. act, 30.

SEC. 1517. The Tax Collector must mark the date of the payment of any tax in the assessment book, opposite the name of the person paying.

Receipt. Rev. act, 30.

SEC. 1518. He must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

Taxes of decedents, duty of probate judge. Rev. act, 14.

SEC. 1519. The Probate Judge must require every administrator and executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

Settlement of collector. Rev. act, 32.

SEC. 1520. On the first Monday in each month the Tax Collector must settle with the Auditor for all moneys collected for the Territory or county and pay the same to the County Treasurer and take duplicate receipts therefor and on the same day must deliver to and file in the office of the Auditor, the Treasurer's receipt and a statement under oath, showing:

1. An account of all his transactions and receipts since his last settlement;
2. That all money collected by him as Tax Collecter has been paid.

Collector refusing to settle. Rev. act, 33.

SEC. 1521. A Tax Collector refusing or neglecting for a period of five days to make the payments and settlements required in this Title, is liable for the full amount of taxes charged upon the assessment roll.

Action against collectors. Rev. act, 33.

SEC. 1522. The District Attorney must bring suit against the Tax Collector and his sureties for such amount, and in case of neglect, the Board of Commissioners may require him to do so; and when the suit is commenced, no credit or allowance must be made to the collector for the taxes outstanding.

Delinquent taxes. 14 ses.

SEC. 1523. On the second Monday in December of each year all unpaid taxes are delinquent, and thereafter the Tax Collector must collect thereon, for the use of the county, an addition of ten per cent.

When taxes not received. 14 ses.

SEC. 1524. No taxes must be collected or received from the second to the third Monday of December, inclusive, in each year.

Delinquent list, when completed. 14 ses.

SEC. 1525. The Tax Collector must make out and, on the third Monday of December deliver to the Auditor a complete delinquent list of all persons and property then owing taxes.

Matters on assessment books, etc. 11 ses., 236.

SEC. 1526. In the list so delivered must be set down in numerical or alphabetical order all matters and things contained in the assessment book and relating to delinquent persons or property.

Credit to be given to tax collector. Rev. act, 32

SEC. 1527. The Auditor must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the Tax Collector who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him the Treasurer's receipt for any existing deficiency.

SEC. 1528. After settlement with the Tax Collector, as prescribed in the preceding section; the auditor must charge the Tax Collector with the amount of taxes, due on the delinquent tax list, with the ten per cent. added thereto, and deliver the list duly certified to such Tax Collector. Collector charged with delinquent list. 14 ses.

SEC. 1529. Within ten days after the final settlement, the auditor must transmit, by mail or express, a statement to the Territorial Controller, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes. Auditor to transmit statement. Rev. act, 32.

SEC. 1530. On or before the fourth Monday in December, the Tax Collector must publish the delinquent list which must contain the names of the persons, and a description of the property delinquent, and the amount of taxes and costs due opposite each name, and description, with the taxes due on personal property, added to taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person. Publication of delinquent list. 14 ses.

SEC. 1531. The Tax Collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and percentage, are paid, the real property upon which such taxes are a lien will be sold at public auction. Notice of sale. N. S.

SEC. 1532. The publication must be made once a week, for six consecutive weeks, in some newspaper, or supplement thereto published in the county, or if there is none, then by posting a copy of the list in three public places in the county. Manner of publication. 14 ses.

SEC. 1533. The publication must designate the time and place of sale. Same. 11 ses., 237.

SEC. 1534. The time of sale must not be less than forty-two nor more than fifty days from the first publication; and the place must be in front of the County Court House. Time and place of sale. 14 ses.

SEC. 1535. The Collector, as soon as he has made the publication required, must file with the County Recorder a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper or supplement thereof, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places in the county designating the places therein, which affidavit is prima facie evidence of all the facts stated therein. Notice containing what. N. S.

SEC. 1536. The Collector must collect in addition to the taxes due on the delinquent list, and ten per centum added thereto, fifty cents on each lot, piece, or tract of land separately assessed, and on the assessment of personal property which must be paid into the County Treasury. Defraying costs. 14 ses.

SEC. 1537. On the day fixed for the sale, or on some subsequent day to which he may have postponed it, of which he must give notice, the Collector, between the hours of ten o'clock, A. M. and three P. M. must commence the sale of the property advertised, commencing at the head of the list, and continuing alphabetically or in the numerical order of lots and blocks until completed. Manner of conducting sale. 11 ses., 237.

SEC. 1538. He may postpone the day of commencing the sale or the sale from day to day; but the sale must be completed within two weeks from the day first fixed. Same. 11 ses , 237.

Owner may designate portions first sold.
11 ses., 237-38.

SEC. 1539. The owner or person in possession of any real estate offered for sale for taxes due thereon may designate, in writing, to the tax collector, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or the possessor does not, then the Collector may designate it and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the taxes and costs due, including fifty cents to the collector for the duplicate certificate of sale, is the purchaser. But in case there is no purchaser in good faith for the same, as provided in this chapter, on the first day that the property is offered for sale, then when the property is offered thereafter for sale, and there is no purchaser in good faith of the same, the whole amount of the property assessed shall be struck off to the county as the purchaser and the duplicate certificate delivered to the County Treasurer and filed by him in his office. No charge shall be made for the duplicate certificate when the county is a purchaser; and in such case the Tax Collector shall make an entry "sold to the county," on the delinquent list opposite the tax, and he shall be credited with the amount thereof in his settlement.

Assessment and sale of property.

SEC. 1540. In case property assessed for taxes is purchased by the county pursuant to the provisions of the last section, it shall be assessed the next year for taxes in the same manner as if it had not been so purchased. But it shall not be exposed for sale; and the sale thereof, under such assessment shall be adjourned until the time of redemption, under the previous sale, shall have expired.

Redemption of property sold to county.

SEC. 1541. In case property is sold to the county as purchaser, and is subsequently assessed, no person shall be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, cost, fees and interest.

Purchaser not making payment.
11 ses., 237.

SEC. 1542. If the purchaser does not pay the taxes and costs before ten o'clock, A. M. of the following day, the property on the next sale day, before the regular sale, must be re-sold for the taxes and costs.

Bid of person refusing to pay rejected.
11 ses., 237.

SEC. 1543. The bid of any person refusing to make the payment for property purchased by him must not after such refusal be received on the sale of any property advertised in the delinquent list of that year.

Collector to give purchaser certificate.
11 ses., 238.

SEC. 1544. After receiving the amount of the taxes and costs, the Collector must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

Certificate of sale.
11 ses., 238.

SEC. 1545. The certificates must be signed by the Collector and one copy delivered to the purchaser, and the other filed in the office of the County Recorder.

Description of land sold entered in a book.
N. S.

SEC. 1546. The Collector before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name and amount paid, regularly number the descriptions on the margin of the book and put a corresponding number on each certificate. Such book must be open to the public inspection without fee during office hours when not in actual use.

Lien vests in purchaser. 14 ses.

SEC. 1547. On filing the certificate with the County Recorder, the lien of the Territory vests in the purchaser and is only divested by the payment to him or to the Tax Collector for his use, of the purchase money and twenty-five per cent thereon.

Redemption. 14 ses.

SEC. 1548. A redemption of the property sold may be made by the owner or any party in interest within one year from the date of the purchase.

Redemption, how made. 11 ses., 239.

SEC. 1549. Redemption must be made in lawful money of the United States, and when made to the Tax Collector he must credit the amount paid to the person named in the Collector's certificate, and pay it on demand to the person or his assignees.

Treasurer to report, etc. N. S.

SEC. 1550. In each report the Collector makes to the Auditor, he must name the person entitled to redemption money, and the amount due to each.

Filing of certificate. 11 ses., 238.

SEC. 1551. On receiving the certificate of sale the Recorder must file it, and make an entry in a book similar to that required by the Collector.

Recorder to note redemption of property. 11 ses., 239.

SEC. 1552. On the presentation of the receipt of the person named in the certificate, or the Tax Collector for his use, of the total amount of redemption money, the Recorder must mark the word "Redeemed," the date and by whom redeemed on the certificate and in the margin of the book where the entry of the certificate is made.

When property not redeemed in six months. 11 ses., 238.

SEC. 1553. If the property is not redeemed within six months from the sale, the Collector or his successor in office must make to the purchaser or his assignee a deed to the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. The collector is entitled to receive from the purchaser, two dollars and fifty cents for making such deed.

Right to redeem by certain payments.

SEC. 1554. In all cases where real estate has been or may hereafter be sold for delinquent taxes, and the county has become the purchaser, and has not disposed of the same, the person whose estate has been or may hereafter be sold, or his heirs, executors, administrators, or other successors in interest, at any time after the time of purchase thereof by the county, and before the county has disposed of the same, has the right to redeem such real estate by paying to the County Treasurer of the county wherein the real estate is situated the amount of taxes due thereon at the time of said sale, with interest thereon at the rate of ten per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also for each year since the sale for which taxes on said land have not been paid, an amount equal to the percentage of Territorial and county tax for that year, upon the value of said real estate assessed for the year of the sale, with interest from the first day of January of each of said years respectively, at the same rate; and also all costs and expenses, and fifty per cent penalty, which may have accrued by reason of such delinquency and sale, and the costs and expenses of such redemption, as hereinafter specified. The County Auditor must, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and must give him duplicate certificates, specifying the several amounts thereof, one of which certificates must be delivered to the County Treasurer, together with the money; and the County Treasurer must execute a deed to the redemptioner. The County Treasurer must settle for the moneys received as for other Territorial and county moneys. The treasurer and auditor must be paid by the redemptioner for making out said estimates and deed, the sum of two dollars each. Upon the payment of the money specified in said certificate, and the giving of the deed aforesaid by the treasurer, any deed or certificate of sale that may have been made to the county becomes null and void, and all right, title, and interest acquired by the county under or by virtue of the tax sale ceases and determines. Whenever property sold to the county, pursuant to the provisions of this chapter, shall be redeemed, the moneys received on account of such redemption shall be distributed between the Territory and the county, and to the respective funds, in the same manner as if the same had been paid in the first instance to the Tax Collector.

Moneys received, how distributed.

Recitals in deed, evidence of what. 11 ses., 239.

SEC. 1555. The matters recited in the certificate of sale must be recited in the deed, and such deed, duly acknowledged or proved, is prima facie evidence that:

1. The property was assessed as required by law;
2. The property was equalized as required by law;
3. The taxes were levied in accordance with law;
4. The taxes were not paid;
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;
6. The property was not redeemed;
7. The person who executed the deed was the proper officer;
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

Recitals conclusive evidence. 11 ses., 239.

SEC. 1556. Such deed duly acknowledged or provided, is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment by the Assessor, inclusive, up to the execution of the deed.

Absolute title. 11 ses., 239.

Exception.

SEC. 1557. The deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except any lien for taxes which may have attached subsequently to the assessment.

Assessment book, etc., evidence of what.

SEC. 1558. The assessment book, or delinquent list or a copy thereof certified by the County Auditor showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

Validity of sale, protest.

SEC. 1559. Whenever property is advertised for sale for the non-payment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale shall not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, shall, not less than six days before the time at which the property is advertised to be sold, deliver to the Tax Collector a protest in writing, signed by the owner or his agent, specifying the portion of the tax which he claims to be invalid, and the grounds upon which such claim is based.

SEC. 1560. The Tax Collector may, at any time after it is assessed, collect the taxes due on personal property except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent.

Seizure of personal property, sale of.
Rev. act, 27.

SEC. 1561. The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentage, and costs.

Manner of conducting sale.
Rev. act, 27.

SEC. 1562. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

Same.
Rev act, 27.

SEC. 1563. For seizing and selling personal property, the Tax Collector may charge in each case the same mileage as is allowed by law to the Sheriff of the county.

Collector's charges.
Rev. act, 27.

SEC. 1564. On payment of the price bid for any property sold, the delivery thereof with a bill of sale, vests the title thereto in the purchaser.

Title to property.
Rev. act, 27.

SEC. 1565. All excess over the taxes, per cent, and costs of the proceeds of any such sale, must be returned to the owner of the property sold, and until claimed must be deposited in the County Treasury subject to the order of the owner, heirs or asigns.

Excess of proceeds over taxes, etc.
N. S.

SEC. 1566. The unsold portion of any property may be left at the place of sale at the risk of the owner.

Unsold property.
N. S.

SEC. 1567. The Tax Collector must annually, on the first Tuesday after the first Monday of January, attend at the office of the Auditor with the delinquent list, and the Auditor must then carefully compare the list with the assessments of persons and property not marked as "Paid" on the assessment book, and when taxes have been paid, must note the the fact in the appropriate column in the assessment book.

Final settlement.
11 ses., 240.

SEC. 1568. The Auditor must then administer to the Tax Collector an oath to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid, has been credited in the list with such payment.

Same.
11 ses., 240.

SEC. 1569. The Auditor must then foot up the amount of taxes remaining unpaid, and credit the Tax Collector with the amount, and have a final settlement with him; and the delinquent list must remain on file in the Auditor's office.

Same.
11 ses., 241.

SEC. 1570. At the same time the Collector must make an affidavit, indorsed on the list, that the taxes not marked as "Paid" have not been paid, and that he has not been able to discover any property belonging to, or in possession of, the persons liable to pay the same whereof to collect them.

Collector to make affidavit.
11 ses., 241.

Unpaid taxes.

SEC. 1571. A statement of the amount of unpaid taxes must be filed by the Auditor with the Board of Commissioners, and the Board may cancel all taxes which in its opinion cannot be collected, and return the statement to the Auditor.

Cancellation.
11 ses., 241.

SEC. 1572. All taxes not canceled must be entered by the Auditor on the assessment book of each succeeding year until paid or canceled.

Taxes not canceled.
11 ses., 241.

Rate of interest.
N. S.

SEC. 1573. Interest at the rate of two per cent. per month must be collected on such delinquent taxes from the time they were first delinquent until paid.

Mistakes.
N. S.

SEC. 1574. When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

Collection of taxes by action.
N. S.

SEC. 1575. When the owner of any assessed personal property, the taxes upon which are not a lien upon real property, has removed, concealed, or disposed of, or threatens or is about to remove, conceal or dispose of such property, or any part thereof, before the taxes levied thereon have been paid, or do, or suffer or cause to be done any act to prevent the seizure thereof by the Tax Collector, or when from any cause the Tax Collector is unable or fails to collect the taxes upon any assessed personal property, the District Attorney must upon written notice from the Tax Collector commence a personal action in the county where the assessment was made for such taxes and the percentage, interest, and costs, in the name of the county against such owner, and in any such action the provisional remedies of arrest and bail and of attachment may be issued against such owner and his property.

Collection by action.
Rev. act, 40.

SEC. 1576. On the trial a certified copy of the assessment, signed by the Auditor of the county where the same was made, with the affidavit of the Collector thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list, is prima facie evidence that such tax and the per centum is due, and entitles him to judgment, unless the defendant proves that the tax was paid.

CHAPTER VIII.

POLL TAXES.

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Persons liable to poll-tax.
Rev. act, 58.
13 ses., secs 120-153.

SECTION 1600. Every male inhabitant of this Territory over twenty-one and under sixty years of age, except paupers, insane persons, Indians not taxed, and active members of any volunteer fire company regularly enrolled as such, must annually pay a poll tax of three dollars; *Provided*, The same be paid prior to the second Monday in November; but if not paid prior to that day, then it shall be three dollars and fifty cents; three-fourths of which additional fifty cents must be paid into the school fund of the county, and the remaining one-fourth in addition to fifteen per cent on three dollars of all poll taxes collected, may be retained by the Tax Collector in full for collection of poll taxes.

SEC. 1601. The Territorial Controller must, before the second Monday of January of each year, cause a sufficient number of blank poll tax receipts to be printed, of uniform appearance, changing the style thereof each year; and said Controller, after signing and numbering them, must cause a number thereof equal to the probable number of inhabitants in each county liable to pay poll tax, to be immediately forwarded to the County Treasurer of each county, who shall sign them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose; and thereupon deliver them to the County Auditor, who must likewise sign them and make an entry of the number he receives, in a book to be kept by him for that purpose.

Territorial controller to have blank poll-tax receipts printed. Rev. act, 59. Style to be changed every year.

County treasurer's duties in relation to same.

SEC. 1602. The County Auditor must from time to time issue to the Tax Collector so many of the receipts for poll tax as he may need, taking his receipt therefor.

Receipts to be delivered to tax collector. Rev. act, 60.

SEC. 1603. No receipts for poll tax other than those mentioned in this chapter, must be used or given for the payment of any such tax.

No other receipts to be used. Rev. act, 61.

SEC. 1604. Upon delivering any such receipts to the Tax Collector, the Auditor must charge the same to him and take his receipt therefor. All such receipts delivered to the Tax Collector before the second Monday of November must be for the sum of three dollars each and he must be charged that sum for each, and all such receipts delivered to the Tax Collector after the second Monday of November in each year must be for the sum of three dollars and fifty cents each, and he must be charged that sum for each.

Receipts to be charged to tax collector. Rev. act, 62.

SEC. 1605. The poll tax is a lien upon the real property assessed to the person liable therefor, but when such person is not assessed for real property the Tax Collector may collect his poll tax at any time. The Tax Collector must demand payment of poll tax of every person liable therefor, and on the neglect or refusal of any person, who is not assessed for real property to pay the same, he must collect it by seizure and sale of any personal property owned by such person.

Poll tax may be collected by seizure and sale of personal property. Rev. act, 66.

SEC. 1606. The sale may be made after three hours verbal notice of time and place, and the provisions of the last preceding chapter as to seizure and sale of personal property are applicable thereto.

Mode of conducting such seizure and sale. Rev. act, 66.

SEC. 1607. The Tax Collector may demand of any employer, or from the superintendent or foreman of any mine or reduction works or any agent of a corporation the names of all persons in his employ or employed in such mine or works or by any such corporation.

Tax collector may demand names.

SEC. 1608. Every person, company, or corporation indebted to one who neglects or refuses, after demand, to pay a poll tax for which he is liable, becomes liable therefor, and must pay the same after service upon him, or upon any member or agent of such company or agent of such corporation, by the Collector of a notice in writing stating the name of any such delinquent.

Debtors of persons owing poll-tax to pay same for such person.

Debtor may charge creditor for poll-tax paid. Rev. act, 66.

SEC. 1609. Every person, company or corporation paying the poll tax of another may deduct the same from any indebtedness to such person.

Receipt for poll-tax delivered to purchaser. Rev. act, 66.

SEC. 1610. The Tax Collector must deliver the poll tax receipt, filled out with the name of the person owing the taxes, to the purchaser of property at any such sale; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

Receipt, evidence of payment. Rev act, 64.

SEC. 1611. The receipt so delivered is the only evidence of payment.

Monthly settlement of collector with auditor. Rev. act, 70.

SEC. 1612. On the first Monday in each month the Collector must make an oath, before the Auditor of the total amount of poll taxes collected by him during the last preceding month, and must at the same time settle with the Auditor for the same, and pay into the County Treasurer's office the total amount of poll taxes collected and file the Treasurer's receipt therefor with the Auditor.

Collector's final settlement with auditor. Rev act, 70.

SEC. 1613. On the second Monday in November the Tax Collector must return to the auditor all three dollar poll tax receipts received by him and not used, and make full settlement with the auditor therefor, and pay to the Treasurer the total amount collected and not before paid in, and file the Treasurer's receipt therefor with the auditor; and at the time of this final settlement on the first Tuesday after the first Monday of January each year, the Tax Collector must return to the auditor all three dollar and fifty cent poll tax receipts received by him and not used, and make final settlement with the auditor therefor, and pay the Treasurer all poll tax money not before paid in and file the Treasurer's receipt therefor with the Auditor.

Auditor to return receipts to treasurer. Rev. act, 70.

SEC. 1614. The auditor must, as soon as either settlement is made, return to the Treasurer the receipts not used.

Treasurer to credit auditor. Rev. act, 70.

SEC. 1615. The Treasurer must credit the auditor with the receipts so returned, and must thereupon seal them up securely and transmit them to the Territorial Controller.

Poll-tax books. 11 ses, 212.

SEC. 1616. It is the duty of the officer charged by law with the collection of poll taxes in the several counties of this Territory, during the month of January next succeeding any general election, to copy into a book furnished him by the Board of County Commissioner's of his county, to be known as the "Poll Tax Book," the name of every person on said poll lists subject to the payment of a poll tax. The names must be alphabetically arranged according to the first letter of the family name, and said book must be kept in his office as a public record. Such officer must from time to time add to the lists in said book, under the proper letter, the names of any residents of his county, or of any persons who may become residents of said county, or who may attain their majority, who are subject to the payment of a poll tax. And any resident of the county may require such officer to insert in said book, under the proper letter, any omitted name of any resident of said county who is subject to the payment of a poll tax, and for the willful omission from the proper place in said book of the name of any resident of his county, subject to the payment of a poll tax, such officer forfeits to the school fund of his county the sum of twenty-five dollars for each name so willfully omitted, to be recovered in

Wilful omission of names.

an action on his official bond by the County Superintendent of Public Instruction.

Collection of poll-taxes. 11 ses., 242.

SEC. 1617. Such officer must at the regular meeting of the Board of County Commissioners, in October each year, produce his poll tax books to the Board, and he must be charged with one poll tax for every name in said book, and can only be discharged by showing that he has collected the tax of every person named in said book, or that those from whom he has failed to collect such poll tax have died, removed from the county, or become exempt, or that for some other sufficient reason the tax in such case could not be collected; and every poll tax from which he is not thus discharged by the Board, he must collect before the first Tuesday after the first Monday of January then next ensuing, or be finally charged therewith; and the Board must cause action to be brought upon the official bond of such officer for the amount of such final charge, together with the amount of any other poll taxes he has willfully failed to collect; and in any such action, proof that the name of any delinquent is on his poll tax book, and that he was not discharged from the collection of the tax from such delinquent by the Commissioners, or that any resident of the county had given him the name of any delinquent as that of a person subject to the payment of such tax, is prima facie evidence of such willful neglect by the officer, and can only be rebutted by proof that the tax is paid, or that the alleged delinquent is exempt or not subject to poll tax in the county, or that it could not be collected by the means afforded by law.

Delinquents

11 ses , 243.

Names on poll-tax book.

SEC. 1618. No name once entered on said poll tax book must be erased therefrom except by the direction of the Board of County Commissioners, on the ground that the party is not subject to the tax; and any name once placed on a poll tax book must be carried to the new books successively, to be prepared after each general election, unless so directed to be omitted.

Poll-tax, how divided. compiled laws, 505. 13 ses., 153.

SEC. 1619. All money collected as poll tax under the provisions of this chapter, after the expense of collecting is paid, must be paid into the county treasury, one-third thereof to be appropriated to Territorial purposes, and the remaining two-thirds to county purposes.

CHAPTER IX.

LICENSES.

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1650. Exception in using liquors.
1651. Peddlers' and hawkers' license.
1652. Additional license, when required.

Licenses to be prepared and printed. Rev. act, 81.

SECTION 1630. The Territorial Controller must prepare and have printed blank licenses of all classes mentioned in this chapter for terms of three, six and twelve months, and for such shorter terms as are herein authorized to be issued, with a blank receipt attached for the signature of the Tax Collector when sold.

Controller to transmit licenses to treasurer. Rev. act, 81.

SEC. 1631. The Territorial Controller, after signing, numbering, and classifying the same, must transmit as many as may be required to the Treasurer of each county and charge him therewith. The Treasurer must countersign the same and deliver them to the County Auditor, taking his receipt therefor and charge him therewith, giving in the entry the number, classes and amounts thereof.

Forms and licenses. Comp. laws, 501.

SEC. 1632. The Auditor must furnish printed forms (similar to those furnished by the Controller) for all licenses, the entire proceeds of which are paid into the county treasury, and each license must be first numbered by the County Treasurer, and by said Treasurer charged to the Auditor in a book kept for that purpose.

Auditor to number, sign, and deliver. Rev. act, 82-85.

SEC. 1633. The County Auditor must affix his official seal to, and sign all licenses, and from time to time deliver them to the Tax Collector in such quantity as may be required; taking his receipt therefor and charge him therewith, giving in the entry the numbers, classes, and amounts thereof.

Auditor to keep license account. Rev. act, 82.

SEC. 1634. The Auditor must keep in his office the stumps of all licenses by him delivered to the Tax Collector, and a ledger in which he must keep the Collector's account for all licenses delivered to him, sold, or returned unsold by him., A correct statement of the Collector's license account must be certified to the County Treasurer each month by the Auditor.

Treasurer to report to controller. Rev. act, 87.

SEC. 1635. On the first business day of January, April, July and October, respectively, of each year, or within ten days thereafter, each County Treasurer must report to the Territorial Controller, the number of licenses issued by the Tax Collector or officer charged with the duty of issuing the same, the amount of money paid for the same, and the number and description of licenses on hand, and the Territorial Controller must hold each county treasurer or other county officer responsible for all licenses issued to him under this act, not accounted for or returned at the settlement required by this act to be made on the first Tuesday after the first Monday of January of each year.

When license to be procured. Rev. act, 84.

SEC. 1636. A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the Tax Collector of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch, establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person in addition to the license provided by this chapter, also procures the license required by the ordinances or orders of such city or town.

Suit against delinquent, damages. Rev. act, 84.

SEC. 1637. Against any person required to take out a license who fails, neglects or refuses to take out such license, or who carries on, or attempts to carry on, business without such license, the Collector may direct suit in the name of the Territory of Idaho as plaintiff, to be brought for the recovery of the license tax, and in such case either the Collector or District Attorney may make the necessary affidavit for, and a writ of attachment may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, twenty dollars damages must be included in the judgment and costs to be collected from the defendant, and when collected five dollars thereof must be paid to the Collector and fifteen dollars to the District Attorney prosecuting the suit.

Tax collectors, duties of. Rev. act, 84.

SEC. 1638. Each Tax Collector must make diligent inquiry as to all persons in his county liable to pay licenses as provided in this chapter, and must require each person to state under oath or affirmation the probable amount of business which he, or the firm of which he is a member, or for which he is an agent or attorney, or the association or corporation of which he is president, secretary or managing agent, will do in the next succeeding three months; and thereupon such person, agent, president, secretary or other officer must procure a license from the tax Collector for the term desired, and the class for which such party is liable to pay; and in all cases where an under-estimate has been made by the party applying, the party making such under-estimate, or the company he represented, are required to pay for a license for the next quarter double the sum otherwise required.

Proof on trials. Rev. act, 84.

SEC. 1639. Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with the damages and costs.

Time of making settlements and payments. Rev. act, 82-86.

SEC. 1640. On the first Monday in each month the Collector must return to the Auditor all licenses unsold, and be credited therewith and must, with the Auditor, appear at the Treasurer's office and pay into the county treasury, one-tenth for Territorial and nine-tenths for county purposes, all moneys collected for licenses sold during the preceding month, take the Treasurer's receipt therefor, and file duplicates thereof with the Auditor. The Auditor must credit the Collector and charge the Treasurer therewith.

Fees for licenses. Rev. act, 75.

SEC. 1641. For each license issued, the Collector must collect a fee of one dollar, which must be equally divided between the Auditor and Collector.

License of auctioneers. Rev. act, 73.

SEC. 1642. Every auctioneer must obtain a license from the Tax Collector and must pay therefor ten dollars per month.

Bridge or ferry license. Comp. laws, 868.

SEC. 1643. Licenses to take tolls on bridges or ferries are fixed annually by the Commissioners. The licenses therein provided for are issued by the County Auditor, and must be obtained from the Tax Collector of the county.

Brokers, trust companies, and others. Rev. act, 78, 79, 80.

SEC. 1644. Persons, associations, or corporations engaged in the occupation of banking, loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons, or in buying or selling State, Territorial, county or city stocks, or other evidences of State, Territorial, county, or city indebtedness; or stocks or notes, bonds, or other evidences of indebtedness of incorporated companies, or in buying or selling gold dust, gold or silver bullion, or gold or silver coin, are divided into five classes, and must pay license as follows:

1. Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter and over, constitute the first class, and must pay a license of one hundred dollars per quarter;

2. Those doing business to the amount of two hundred thousand dollars and less than two hundred and fifty thousand dollars per quarter, constitute the second class, and must pay a license of eighty dollars per quarter;

3. Those doing business to the amount of one hundred thousand dollars and less than two hundred thousand dollars per quarter, constitute the third class, and must pay a license of fifty dollars per quarter;

4. Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter, constitute the fourth class, and must pay a license of forty dollars per quarter;

5. Those doing business in any amount under fifty thousand dollars per quarter, constitute the fifth class, and must pay a license of thirty dollars per quarter. All revenue collected under this section may be retained by and for the use of the county in which it is collected. Act Jan'y 12, 1877.

Licenses, kinds of. Rev. act, 72. 12 ses., 13.

SEC. 1645. Licenses must be obtained for the purposes hereinafter named, for which the Tax Collector must require the payment as follows:

Billiards.

1. From each proprietor or keeper of a billiard, pool or bagatelle table, or any other kind of table on which games are played with balls and cue, for hire, for each table fifteen dollars per quarter; and for a bowling alley, five dollars per quarter for each alley; but no license must be granted for a term less than three months;

Theaters, etc.

2. From the manager or lessee of every theater, three dollars per day, if granted for a less term than one month; if granted for one month, fifty dollars; and for each exhibition of serenaders, negro minstrels, opera, melodeon performance, or other musical entertainment, dancing or ballet, the same pay for license as is herein provided for a theater license;

Caravans, etc.

3. For each exhibition for pay of a caravan or menagerie, or any collection of animals, circus, equestrian or other acrobatic performance, ten dollars; and for each show for pay of any figures, jugglers, necromancers, magicians, wire or rope dancing, or sleight-of-hand exhibition, five dollars each day;

Pawnbroker.

4. From each pawnbroker fifty dollars per quarter.

Certain exhibition, etc., exempted. 10 ses., 27.

SEC. 1646. The provisions of sub-division 2 and 3 of the last section do not apply to Boise City or to exhibitions or entertainments given for the benefit of churches, schools, or other charitable entertainments, by any amateur dramatic association or literary society of the town or district in which such exhibition or entertainment is given.

Banking games at cards.
13 ses., 161.

SEC. 1647. Persons who keep or run, or in whose saloon, house, or place of of business is kept or run any faro, monte or twenty-one game or any other banking game or games at cards, dice, or other device, must pay a license of fifty dollars per quarter, or any less time, for each and every such game; but no person can have a license for French or three carde monte, E. O. or roulette, or for any percentage game, or the game commonly called the thimble game, or for any game declared unlawful by the laws of this Territory. All moneys received for licenses under this section must be paid into the county treasury for the county school fund.

Retail liquor licenses.
Rev. act, 75.

SEC. 1648. Every person who sells spirituous, malt, or fermented liquors or wine, in less quantities than one quart, must obtain a license from the Tax Collector as prescribed in this chapter, and pay therefor fifty dollars per quarter; *Provided,* That within the corporate limits of Boise City, in Ada County, such license shall be twenty-five dollars per quarter; and *Provided further,* That all persons engaged in retailing liquors in connection with the entertainment of travelers, at any point distant one mile or more outside the limits of any city or town, shall pay a quarterly license of fifteen dollars.

Merchants' and keepers of livery stables license.

SEC. 1649. Every person who, at a fixed place of business, sells any goods, wares or merchandise, wines or distilled liquors, drugs or medicines, jewelry or wares of precious metals, whether on commission or otherwise, (except the agricultural productions of the Territory when sold by the producer thereof, and except such as are sold by auctioneers at public sale under license,) and all persons who keep horses or carriages for hire, or run omnibuses, coaches, cabs or hacks for hire or transportation, (except such as are used in the transportation of goods, and except stages transporting United States mail,) must obtain from the Tax Collector of the county in which the business is transacted and for each branch of such business, a license, and pay quarterly therefor an amount of money to be determined by the class in which such person is placed by the Tax Collector; such business to be classified and regulated by the amount of the average monthly sales made or hiring done, and at the rates following:

1. Those who are estimated to make average monthly sales or hiring to the amount of twenty thousand dollars or more, constitute the first class and must pay twenty-five dollars per month;
2. Of ten thousand dollars and less than twenty thousand dollars, constitute the second class, and must pay twenty dollars per month;
3. Of five thousand dollars and less than ten thousand dollars, constitute the third class and must pay fifteen dollars per month;
4. Of two thousand five hundred dollars and less than five thousand dollars, constitute the fourth class and must pay ten dollars per month;
5. Of one thousand dollars and less than two thousand five hundred dollars, constitute the fifth class and must pay eight dollars per month;
6. Of five hundred dollars and less than one thousand

dollars, constitute the sixth class and must pay six dollars per month;

7. Of three hundred dollars and less than five hundred dollars, constitute the seventh class and must pay four dollars per month;

8. Of two hundred dollars and less than three hundred dollars constitute the eighth class and must pay three dollars per month;

9. Of one hundred dollars and less than two hundred dollars, constitute the ninth class, and must pay two dollars per month;

10. Of all amounts under one hundred dollars, constitute the tenth class, and must pay one dollar per month.

Exception in using liquors. 11 ses., 234.

SEC. 1650. The sale of liquors and wines by persons licensed under the preceding section, must not be in less quantity than one quart measure. No license must be required of physicians, surgeons, apothecaries, or chemists for any wines or spirituous liquors they may use in the preparation of medicines or sell for medicinal or medical purposes.

Pedlers' and hawkers' license. Rev. act, 73.

SEC. 1651. Every traveling merchant, hawker, or peddler, who carries a pack and vends goods, wares, or merchandise of any kind other than the manufactures or productions of this Territory, must pay for a license ten dollars per month; and every such traveling merchant, hawker or peddler, who uses a wagon, boat or other water craft, or one or more animals, for the purpose of vending such goods, wares, or merchandise of any kind, must pay for a license twenty dollars per month.

Additional license when required. 11 ses., 234.

SEC. 1652. Every person required by this chapter to obtain a license, where the amount or class of license is regulated by the amount or average amount of monthly or quarterly business or sales, must before any such license is issued to him, take and subscribe an affidavit before the Tax Collector or other officer issuing such license, stating the total amount of business done or sales made by him, or the firm or company of which he is a member, or for which he desires a license, during the last preceding quarter, and such affidavit must be preserved in the office of the License Collector, and if such amount is greater than the amount for which such person, firm, or company procured a license for such preceding quarter, such person, firm, or company must pay for and procure a license for such preceding quarter according to his or their actual business or sales in addition to the license theretofore procured, before such person, firm or company can receive any license for the current or succeeding quarter; but this section does not relieve any person, firm or company from the penalties imposed by any other provision of law; and if any person in making such affidavit willfully swears falsely, he is liable to the pains and penalties of perjury.

CHAPTER X.

SETTLEMENTS WITH THE CONTROLLER AND PAYMENTS INTO THE TERRITORIAL TREASURY.

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County treasurers to settle with controller upon his order.
Rev. act, 93.

SECTION 1670. The Treasurers of the respective counties must at any time, upon the order of the Controller and Treasurer of the Territory, settle with the Controller, and pay over to the Treasurer all moneys in their possession belonging to the Territory.

Time when treasurers must make settlements.
Rev. act, 93.

SEC. 1671. The Treasurers of the several counties respectively, must, between the first and fifteenth days of January, April, July, and October of each year, make out and transmit by mail, express, or other safe conveyance, a statement to the Territorial Controller and Treasurer, and settle in full with the Territorial Controller, and pay over in cash to the Territorial Treasurer all funds which have come into their hands as County Treasurers before the close of business at the end of the previous month, and belonging to the Territory.

Settlement of treasurer.
Rev. act, 94.

SEC. 1672. And each county treasurer must at the time of making his settlement with the Controller, produce to him statements of transactions had in Territorial and county licenses and poll tax receipts since the last settlement; which statement must be made by the County Auditor according to the forms which are furnished by the Territorial Controller for that purpose, and each county treasurer must at the same time produce to the controller the certified statement of the County Auditor of the amount allowed and paid to the assessor, tax-collector and auditor as prescribed by this Title; and no county treasurer is allowed to make any settlement with the Controller or in any manner to release himself and bondsmen from liability for the full amount of money by him received, unless he produces to the Controller the statement required by this section.

Allowances to be certified to.
Rev. act, 95.

SEC. 1673. Whenever any allowance is made to any Assessor, Tax Collector or Auditor, as in this act provided, the Clerk of the Board of Commissioners must certify to the amount so allowed to the Auditor, who shall draw his warrant on the County Treasurer for that part of the same which the county is required to pay, which must be in proportion to the amount of the taxes levied for Territorial and county purposes respectively; and the Auditor must make a certified copy of the account and endorse thereon the amount due from the Territory, and endorse on the account remaining in his office the same, and must furnish such copy-with the endorsement thereon to the County Treasurer, who must pay out of the money belonging to the Territory the amount endorsed on such account, to the Assessor, Tax Collector or Auditor, and take his receipt thereon; and the Treasurer on making his quarterly settlement must present with the Auditor's statement, such copy of the account allowed by the Board to the Assessor, Tax Collector or Auditor endorsed and receipted as herein provided, and the Territorial Controller must allow him for the amount so paid.

Treasurers neglecting to settle, penalty. Rev. act, 93.

SEC. 1674. Every County Treasurer who neglects or refuses to transmit such statement to the Controller and Treasurer at the times specified in this chapter, and to settle and make payment as required by this chapter, forfeits all fees and percentage which would have otherwise been due him from the Territory and is liable on his official bond.

Settlement of auditors with controller. Rev. act, 93.

SEC. 1675. The Auditor of each county, between the first and fifteenth day of each month in which the Treasurer of his county is required to settle with the Controller, must make in duplicate and verify by his affidavit a report to the Controller, showing specifically the amount due the Territory from each particular source of revenue at the close of business on the last day of the preceding month.

Auditor to transmit report to controller. Rev. act, 93.

SEC. 1676. The Auditor must at once transmit by mail or express to the Controller one copy of the report, and must deliver the other copy to the Treasurer of his county.

Failure of auditor to make report, penalty. N. S.

SEC. 1677. Every Auditor who fails to make and transmit the report required by this chapter, or any report or statement required by this Title, forfeits all compensation which would be otherwise due him from the Territory, and is liable on his official bond.

Controller to deduct fees, etc., on settlement. Rev. act, 93.

SEC. 1678. In the settlement the Controller must deduct the commissions allowed to the County Treasurer for his services, and any other amount due the county or the officers thereof: and the Territorial Treasurer may pay out of the Territorial treasury the necessary expense of the transmission of Territorial moneys from the respective County Treasurers to the Territorial treasury.

Compensation of county officers for collecting Territorial revenue. 9 ses., 15.

SEC. 1679. The compensation for the services of Auditors, Assessors, and Tax Collectors, and County Treasurers respectively, for the duties performed by them in asessing, collecting, receiving, and paying over Territorial taxes or the Territorial portion or any taxes are as follows:

To the Assessor and Tax Collector, as full compensation for his services and the services of his deputies, seven (7) per centum of the amount by him paid over; to the County Treasurer and Auditor, each three (3) per centum of the amount paid over by the Treasurer.

Controller's statement, what to contain. N. S.

SEC. 1680. The Controller must, after the Treasurer has made settlement and payment, enter upon each copy of the Auditor's report a statement showing:

1. The amount of money by the County-Treasurer paid into the treasury of the Territory;

2. The amount deducted for commissions and other allowances: and must then return one copy of the report to the County Treasurer.

Treasurer to file controller's statement with auditor. N. S.

SEC. 1681. The County Treasurer must file with the Auditor of his county the copy returned to him by the Controller.

SEC. 1682. The Auditor must then make the proper entries in his account with the Treasurer.

Auditor to make entries.
N. S.

SEC. 1683. The Controller may examine the books of any officer charged with the collection and receipt of Territorial taxes.

Controller may examine books.

SEC. 1684. If he believes any officer has been guity of defrauding the Territory of revenue, or has neglected or refused to perform any duty relating to the revenue, he must direct the District Attorney or other counsel to prosecute the delinquent.

Officer guilty of defrauding, prosecution of.

SEC. 1685. The Controller or Attorney General may employ other counsel than the District Attorney, and the expenses must be paid out of the Territorial treasury.

Other counsel may be employed, expenses, how paid.

CHAPTER XI.

MISCELLANEOUS PROVISIONS.

SECTION
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1701. Omissions, etc. in delinquent lists, how corrected.
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SECTION
1705. Fines, forfeitures, penalties, etc., paid into county treasury.
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1707. Taxes payable only in lawful money.
1708. Annual settlements of certain officers with Auditor.
1709. Officers to perform only the duties pertaining to their own offices.
1710. Saving clause.
1711. Books to be open for inspection.

SECTION 1700. Omissions, errors or defect in form in any assessment book, when it can be ascertained therefrom what was intended, may be supplied or corrected by the Assessor at any time prior to the delinquent sale and after the original assessment was made.

Errors, etc., in assessment book, when may be corrected.
10 ses., 11.

SEC. 1701. When the omission, error or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

Omissions, etc., in delinquent list, how corrected.
11 ses., 236.

SEC. 1702. The publication must be made in the same manner as the original publication, and for not less than one week.

Publication of corrected delinquent list.
11 ses., 236.

SEC. 1703. In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations and figures may be used to designate the township, range, section or parts of section, lot or block.

Initial letters, abbreviations, etc., when may be used.
11 ses., 236.

SEC. 1704. No assessment, or act relating to assessment, or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

No assessment illegal on account of informality.
10 ses., 11.

SEC. 1705. The fines, forfeitures and penalties incurred by a violation of any of the provisions of this Title, must be paid into the treasury for the use of the School Fund of the county where the person, against whom the recovery is had, resides.

Fines, etc., paid into county treasury.

SEC. 1706. Whenever any Assessor, Collector, Auditor, Treasurer, or any other officer upon whom any duties devolve under this act, or under any other revenue act of this Territory, willfully neglects or refuses to perform any such duties, or performs them in a careless or incompetent manner, he may be removed from office in the manner prescribed

Revenue officers suspended and removed.
Rev. act, 97.

by law, and when proceedings are commenced to remove such officer from his office, the Board of Commissioners, (and in case such officer be a Commissioner, then the Probate Judge) may suspend such Assessor, Collector, Auditor, Treasurer, or other officer from his powers and duties under this act, and under any other revenue act, and appoint a competent person in his place, until the proper tribunal has either removed or acquitted such suspended officer; and any act concerning the revenue or assessment, or the collection of taxes or sale of property for the non-payment of taxes, performed by any such temporary officer, is as valid and of the same force and effect as if performed by the suspended officer; *Provided*, That such appointee has first qualified and given such bond with sureties for the faithful performance of the duties of his office as required of persons elected thereto.

Taxes payable in lawful money.

SEC. 1707. Taxes must be paid in lawful money of the United States.

Annual settlements of certain officers with auditor. Rev. act, 98.

SEC. 1708. Every Assessor and Tax Collector, District Attorney and County Treasurer must annually, on the first Tuesday after the first Monday of January, make a settlement with the County Auditor of all transactions connected with the revenue for the previous year.

Officers to perform only the duties pertaining to their office. Rev. act, 99.

SEC. 1709. The Treasurer, Tax Collector, Assessor, Clerk of the Board of Equalization, and each member of the Board must separately perform the duties required of him in his office, and must not, except in the cases provided by law, perform the duties required of any other officer under this Title.

Saving clause.

SEC. 1710. All taxes assessed before this Code takes effect must be collected under the laws in force at the time the assessment was made, and in the same manner as if this Code had not been passed.

Books to be open for inspection. Rev. act, 517.

SEC. 1711. The books, papers, and accounts of each officer relating to the assessment or collection of taxes, or to the receiving, auditing or disbursing moneys collected for the use or benefit of the Territory, or of any county, must at all times during office hours, when not necessarily in use by the officers, be open for any person whomsoever to inspect or copy without any fee or charge.

TITLE XI.

THE GOVERNMENT OF COUNTIES.

CHAPTER I.

COUNTIES AS BODIES CORPORATE.

SECTION
1730. Every county a body corporate.
1731. Powers, how exercised.
1732. Name and designation.
1733. Enumeration of powers.
SECTION
1734. Limitation on powers; loaning credit.
1735. Payment of judgment against counties.

SECTION 1730. Every county is a body politic and corporate, and as such has the powers specified in this Title or in other statutes, and such powers as are necessarily implied from those expressed.

Every county a body corporate
Comp. laws, p. 754.

SEC. 1731. Its powers can only be exercised by the Board of County Commissioners, or by agents and officers acting under their authority, or authority of law.

Powers, how exercised.
Comp. laws, p. 520.

SEC. 1732. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties.

Name and designation.

SEC. 1733. It has power:

1. To sue and be sued;
2. To purchase and hold lands within its limits;
3. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers;
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require;
5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by law.

Enumeration of powers.
Comp. laws, p. 754.

SEC. 1734. No county must in any manner loan or give its credit to or in aid of any person, association, or corporation unless it is expressly authorized by law so to do.

Limitation on powers.
N. S.

SEC. 1735. Upon presentation to the Board of County Commissioners of a final judgment for money or damages, duly certified, against their county, the Board must allow the same and direct its payment as other claims against the county are paid.

Payment of judgment against counties.
Comp. laws, p. 754.

CHAPTER II.

THE BOARD OF COUNTY COMMISSIONERS.

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1763. Provide appliances for holding elections.
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1789. Same.
1790. Same.
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1792. To post notices as to camp fires.

Board, number to compose. Comp. laws, p. 520.

SECTION 1745. Each county must have a Board of County Commissioners consisting of three members.

Qualifications. 13 ses., 85.

SEC. 1746. Each member of a Board of Commissioners must be an elector of the district he represents.

Term of office. Comp. laws, p. 521.

SEC. 1747. The term of office of a Commissioner is two years.

County, districting of. 13 ses., 85.

SEC. 1748. At their regular meeting in July preceding any general election, the Board of Commissioners must district their county into three districts, as nearly equal in population as may be, to be known as County Commissioners' Districts, Numbers 1, 2, and 3, respectively; but in making such districts no voting precinct shall be divided.

Vacancy in board, how filled. Comp laws, p. 530.

SEC. 1749. When a vacancy occurs in a Board of County Commissioners, from failure to elect, or otherwise, the other two members of the Board, may, at any meeting fill the vacancy by appointing for the unexpired term some qualified elector of the district for which the vacancy occurs, *Provided*, That if there are two or more vacancies in the Board at the same time, the Clerk of the Board must call a special election to fill such vacancies, which election and notice thereof are governed by the general election law as far as applicable and the Clerk of the Board and the Probate Judge of the County must canvass the vote and declare the result of such special election.

Commissioners must elect chairman. Comp. laws, p. 521. 13 ses., 57.

SEC. 1750. The members of the Board of Commissioners must, at their first regular meeting on the second Monday of January next after their election, elect a Chairman from their number.

Chairman, permanent and temporary. Comp. laws, 521-530.

SEC. 1751. A majority of the Board constitutes a quorum. The Chairman must preside at all meetings of the Board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the Board or its Clerk may administer oaths to any person concerning any matter submitted to them or connected with their powers or duties.

Clerk of commissioners, who is. Comp. laws, p. 521-522.

SEC. 1752. The County Auditor is ex-officio Clerk of the Board of Commissioners. The records must be signed by the Chairman and the Clerk.

Duties of clerk. Comp. laws, p. 522.

SEC. 1753. The Clerk of the Board must:

1. Record all the proceedings of the Board;
2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county;
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;
4. Sign all orders made and warrants issued by order of the Board for the payment of money;
5. Record the reports of the County Treasurer of the receipts and disbursements of the county;
6. Preserve and file all accounts acted upon by the Board;
7. Preserve and file all petitions and applications for franchises; and record the action of the Board thereon;
8. Record all orders levying taxes; and,
9. Perform all other duties required by law or any rule or order of the Board.

Books to be kept by the board. Comp. laws, p. 522.

SEC. 1754. The Board must cause to be kept:

1. A "Minute Book" in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings;
2. An "Allowance Book", in which must be recorded all orders for the allowance of money from the County Treasury, to whom made, and on what account, dating, numbering and indexing the same through each year;
3. A "Road Book", containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads, road districts, and Overseers thereof, their reports and accounts;
4. A "Franchise Book", containing all franchises granted by them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required;
5. A "Warrant Book" to be kept by the County Auditor, to which must be entered, in the order of drawing, all warrants drawn on the Treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

Regular meetings fixed. Comp. laws, 521. 12 ses., 10.

SEC. 1755. The regular meetings of the Boards of Commissioners must be held at their respective county seats on the second Mondays in January, April, July, and October of each year, and must continue from time to time until all the business before them is disposed of. Such other meetings must be held, to canvass election returns, equalize taxation, and other purposes, as are prescribed by law or provided for by the Board.

Other regular meetings may be fixed. Comp. laws. 521.

SEC. 1756. Adjourned meetings may be provided for, fixed, and held for the transaction of business by an order duly entered of record, in which must be specified the character of business to be transacted at such meetings, and none other than that specified must be transacted.

Special meetings, how called. Comp. laws, 521.

SEC. 1757. If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the Board, a special meeting may be ordered by a majority of the Board.

The order must be entered of record, and five days notice thereof must, by the Clerk, be given to each member not joining in the order. The order must specify the business to be transacted and none other than that specified must be transacted at such special meeting.

Meetings and records public. Comp. laws, 522.

SEC. 1758. All meetings of the Board must be public, and the books, records, and accounts must be kept at the office of the Clerk, open at all times for public inspection, free of charge. The Clerk of the Board must give five days public notice of all special or adjourned meetings, stating the business to be transacted by posting three notices in conspicuous places, one of which shall be at the Court House door.

General permanent powers. Comp laws, 525.

SEC. 1759. The Boards of Commissioners in their respective counties, have jurisdiction and power, under such limitations and restrictions as are prescribed by law.

Conduct of officers.

1. To supervise the official conduct of all county officers, and officers of all districts and other sub-divisions of the county charged with assessing, collecting, safe keeping, management, or disbursement of the public moneys and revenues; see that they faithfully perform their duties; direct prosecution for delinquencies; approve the official bonds of county and precinct officers, and when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection;

To district county. Comp. laws, p. 526.

2. To divide the counties into precincts, school, road and other districts required by law, change the same and create others, as convenience requires;

To create election precincts.

3. To establish, abolish, and change election precincts, and to appoint Judges of Elections, canvass all election returns, declare the result, and issue certificates thereof;

Roads, bridges, etc.

4. To lay out, maintain, control, and manage public roads, turnpikes, ferries, and bridges within the county, and levy such tax therefor as authorized by law;

Indigent sick. Comp. laws, p. 852.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect, officer, and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding two dollars, and an ad valorem tax not exceeding one-fourth of one per cent, or either of such

levies, when both are not required, on all persons subject to poll tax in the county and taxable property of the county;

6. To provide a farm in connection with the county hospital, and make regulations for working the same, or for the maintenance of the inmates under a lease of the same; To provide county farm.

7. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county; preserve, take care of, manage, and control the county property, but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by them for that purpose, and no more than the appraised value must be paid therefor; Acquire property for the county.

8. To sell at public auction at the court house door, after thirty days previous notice given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property, real or personal, belonging to the county, not necessary for its use, paying the proceeds into the County Treasury for the use of the county; May sell county property.

9. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of moneys, belonging to the county, or appropriated by law, or otherwise, for its use and benefit; Audit accounts of officers.

10. To examine, settle, and allow all accounts legally chargeable against the county, and order warrants to be drawn on the County Treasurer therefor, and provide for the issuing of the same; Allow accounts.

11. To levy such tax annually on the taxable property of the county as may be necessary to defray the current expenses thereof, including salaries otherwise unprovided for, not exceeding the amount authorized by law; and to levy such taxes as are required to be levied by special or local statutes; Levy tax for current expenses.

12. To equalize the assessments; Board of equalization.

13. To direct and control the prosecution and defense of all suits to which the county is a party in interest, and employ counsel to conduct the same, with or without the District Attorney, as they may direct; To direct legal proceedings.

14. To insure the county buildings in the name of and for the benefit of the county; Insuring property.

15. To grant licenses and franchises, as provided by law, for constructing, keeping, and taking tolls on roads, bridges and ferries, and fix the tolls and licenses; Granting franchises.

16. To fix the compensation of all county officers not otherwise by general or special tax fixed, and provide for the payment of the same; Compensation of officers.

17. To fill by appointment all vacancies that may occur in county or precinct officers; To fill vacancies.

18. To contract for the county printing, and provide books and stationery for county officers; Printing.

19. At the adjournment of each session of the Board to cause to be published in a newspaper or otherwise a fair statement of all their proceedings, and semi-annually a statement of the financial condition of the county; To publish proceedings.

20. To make and enforce such rules and regulations for the government of their body, the preservation of order and the transaction of business as may be necessary; May make rules for board.

May provide seal.

21. To adopt a seal for their Board;

May do other acts required or necessary.

22. To do and perform all other acts and things required by law not in this Title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government;

Destruction of wild animals. 14 ses.

Bounty.

SEC. 1760. (Sec. 1.) The Board of County Commissioners of each county in Idaho Territory, may, and upon petition of not less than one-tenth of the qualified voters who are tax payers of the county, shall fix and determine the bounty to be paid in the county for the destruction of each coyote, squirrel, wild cat, fox, lynx, bear, rabbit, panther, cougar, lion, badger and nondescript, and to prescribe rules for making proof of such destruction and obtaining such bounty, *Provided*, That in no case shall the bounty for rabbits or squirrels be less than three cents nor more than five cents for each animal destroyed.

Tax to pay bounty.

SEC. 1760*a*. (Sec. 2.) In order to pay bounties provided for in section 1 of this act, the Board of County Commissioners of any county in which a bounty for any or all the animals in section 1 has been offered, are hereby authorized and required to levy and cause to be collected a special tax of not more than one-half of one per cent on all taxable property in said county. Said levy shall be made at the same time that other taxes are levied, and collected as other taxes are collected, and when so collected shall be paid into the county treasury and then become a special fund to be known as the scalp fund.

Proof required.

Scalps.

SEC. 1760*b*. (Sec. 3.) Any person desirous of obtaining any bounty offered for the destruction of any animals mentioned in section 1, shall present to the Board of County Commissioners a verified statement showing the number and kind of animals destroyed by the person seeking the bounty and that the animals destroyed by him were killed in the county in which application for bounty is made. And such person shall also be required to furnish to the Board of County Commissioners the scalps or ears ~~of~~ the animals destroyed, *Provided*, Any party residing over ten miles from the county seat may make affidavit before any one authorized to administer oaths in said county, and said Commissioners shall allow such claim when accompanied with the scalp from said animals. Said scalps and ears shall be immediately destroyed in the presence of the County Commissioners.

Surplus transferred to general fund.

SEC. 1760*c*. (Sec. 4.) The County Commissioners of any county in which a scalp fund shall have been established, may at the end of any quarter when there is a deficiency in the current expense fund of said county and a surplus in the scalp fund in excess of one hundred dollars, transfer all of such surplus exceeding one hundred dollars to the current expense fund, after all the warrants previously drawn on such scalp fund shall have been paid, and whenever there shall occur a deficiency in the scalp fund the Treasurer shall transfer from the current expense fund to the scalp fund a sufficient amount of money to supply the deficiency if not in excess of the amount previously transferred to the said current expense fund, and at the time due the scalp fund.

[Act Jan. 22, 1887, in effect immediately.]

Court house, etc. 11 ses., 248.

Offices for county officers.

Contracts.

Books of record, stationery.

SEC. 1761. The Board must cause to be erected or furnished, a court house, jail and such other public buildings as may be necessary; and must, when necessary, provide offices with necessary furniture for the Sheriff, the County Recorder and Auditor, Clerk of the District Court, County Treasurer, District Attorney and Probate Judge, and must draw warrants in payment of the same; *Provided*, That the contract for the erection of any such building must be let after thirty days' notice for proposals to the lowest bidder, who will give security for the completion of any contract he may make respecting the same; and, *Provided further*, No contract must be let under the provisions of this section when the expenses thereunder will exceed one thousand dollars. The Board must also provide all necessary books of record for the County Recorder and Auditor, County Treasurer, County Assessor and Collector, Clerk of the District Court, Probate Court and the Board, and stationery for the use of the Board and so much as is necessary for the use of said county officers in the transaction of official business for which no fee is provided by law.

Tax payers may petition for new buildings. Comp. laws, p. 523,

SEC. 1762. When a petition signed by at least one-third of the tax payers who are qualified voters of any county, is presented to the Board at any regular meeting, asking that a court house, jail, or other public buildings or improvements be built for the use and benefit of the county, the cost of which will exceed one thousand dollars, the Board must not act upon the said petition until the next regular meeting; and at least for four weeks before the next meeting, the Clerk of the Board must give notice by publication in a newspaper or otherwise, as ordered by the Board, of presentation of said petition, and the nature and cost of said buildings, or improvements contemplated, and that the petition will be acted upon by the Board, at their next regular meeting. If they deem the interest of the county demands it, the Board must order the said improvements or buildings to be made or erected, and must thereupon advertise for sealed proposals for making said improvements or erecting said buildings. Such notice for sealed proposals must be given by the Clerk, in a newspaper or otherwise, as ordered by the Board, for at least thirty days, and must contain explicit specifications of the improvements or buildings to be made or erected, and state the day when said proposals will be opened. Proposals may be received until the opening of the session on the day they are to be opened, and they must be opened and considered publicly, and the contract let to the lowest responsible bidder, unless they all be rejected, which the Board shall have power to do if they are too high; and the Board may proceed to advertise again or let the same by private contract, provided it be for a less sum than that proposed by the lowest bidder. The person or persons awarded the contract must give a good and sufficient bond to be approved by the Commissioners for the completion of the contract according to the specifications. The building or improvements may be paid for by warrants upon the proper fund, or by the levying of a special tax, not exceeding fifty cents on each one hundred dollars of assessable property, to be paid into a special fund for that purpose; against which warrants may be drawn in payment for buildings or other improvements constructed or made under the provisions of this section.

Provide appliances for holding elections. 13 ses., 109.

SEC. 1763. The Board must provide all poll lists, poll books, blank returns and certificates, proclamations of election and other appropriate and necessary applications for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

Certificates issued as board of canvassers. Comp. laws, p. 524.

SEC. 1764. Whenever, as canvassers, the Board of Commissioners have declared the result of an election held in the county, certificates must be by their Clerk issued to all persons elected to a county office, or to a precinct or district office therein, and such other certificates must be made out and transmitted as required by the Title relative to "Elections."

Appointments made on petition. N. S.

SEC. 1765. No appointment to fill a vacancy in office must be made by the Board except upon petition, signed by at least thirty qualified electors of the county, if for a county office, or by not less than fifteen of the qualified electors of the precinct, or district, if for a precinct or district office.

List of claims allowed to be furnished board and county treasurer.

SEC. 1766. The Board must require their Clerk at the close of every session to furnish them with a list of all bills and accounts of every nature, approved by them at said session giving the name of each person in whose favor an account or bill of any kind or nature has been allowed, with the amount allowed him and out of what fund the same is to be paid. They must compare their list with the record of their proceedings, and if not found correct, make it so and certify to said list and file it with the County Treasurer, and the Treasurer must pay no warrant drawn on any fund in the county treasury that does not correspond with the files furnished him by the Board.

Board must not divert money from one fund to another. Comp. laws, 528.

SEC. 1767. The Board must not transfer any money from one fund to another, nor in any manner divert the money in any fund to other uses except in cases expressly provided and permitted by law, nor make any preferred creditor, nor cause any warrant to be drawn payable out of its order except on the order of the district court in cases provided by law, and the County Treasurer must, in all things observe these instructions; *Provided*, That when any money shall have been assessed and collected in any of the counties of this Territory, and the same set apart as a separate fund, for a special purpose, and from any cause the money in said fund shall have become inoperative for the purpose for which said fund was created, it shall be lawful for the Board of County Commissioners, in such cases to transfer the money in said fund to such fund as the Board of County Commissioners may deem best.

May transfer inoperative fund. 14 ses.

[Act Jan. 29, 1887.]

Power to require attendance of witnesses. N. S.

SEC. 1768. The Board may, by their Chairman, or the Chairman of any committee, issue subpœnas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within their jurisdiction.

Examination of witnesses. N. S.

SEC. 1769. A witness is bound to attend, when served, and to answer all questions which he would be bound to answer in the same case before a court of justice. Obedience to the subpœna, or to an order to attend, or to testify, may be enforced by the Board, and for that purpose the Board has all the powers conferred by, and the witness is subject to all the provisions of the Code of Civil Procedure.

Officers and witnesses not to be prepaid.

SEC. 1770. Neither the officers serving subpœnas nor the witnesses subpœnaed to testify in relation to matters of public concern before the Board of Commissioners, are entitled to have their fees prepaid, but officers must serve the subpœnas and witnesses must attend without their fees being prepaid. The Board may allow them reasonable compensation for services and attendance.

When board must not allow claims or contract debts. Comp. laws, p. 527.

SEC. 1771. The Board must not for any purpose contract debts or liabilities, except in pursuance of law. They must not allow any account, or cause or permit any warrant to be issued to any county or precinct officer entrusted with the collection, safe keeping or disbursement, of the public funds, who has failed to make any statement or settlement of his accounts, as required by law, or who has failed to account for and pay over the public funds received by him when, and as required by law, or who is in any way a delinquent or defaulter in his trust, nor to any delinquent tax payer. They must not allow any account, or cause or permit any warrant to be drawn in favor of any person who is liable, either as principal or surety, upon any official or other bond, cognizable by the Board after a breach of such bond, or upon any recognizance in a criminal action, or proceeding in the county after the forfeiture of such recognizance. They must not allow any account or claim for services to a deputy of any officer, or cause or permit any warrant to be drawn therefor, except to and through, and in the name of his principal. They must not provide any stationery for any officer, to be used for any purpose or act for which such officer is allowed a fee by law. They must not allow any account or claim of any officer while he neglects or refuses to perform any duty required of him by law. 14 ses.

[Act Feb. 3, 1887.]

County officer not to present certain claims against county. Comp. laws, p. 528.

SEC. 1772. No county officer must, except for his own services, present any claim, account or demand for allowance against the county, or in any way advocate the relief asked on the claim or demand made by another. Any citizen and tax payer of the county in which he resides may appear before the Board and oppose the allowance of any claim or demand made against the county.

Account, how made and prosecuted. Comp. laws, p. 528.

SEC. 1773. The Board of Commissioners must not hear or consider any claim in favor of an individual against the county unless an account properly made out, giving all items of the claim, duly verified as to its correctness, and that the amount claimed is justly due, is presented to the Board within a year after the last item of the account accrued.

Account must be filed prior to session. Comp. laws, p. 528.

SEC. 1774. No account must be necessarily passed upon by the Board unless made out as prescribed in the preceding section and filed by the Clerk at least one day prior to the session at which it is asked to be heard.

Claims to be rejected, proceedings on part allowance. Comp. laws, 527-528.

SEC. 1775. When the Board finds that any claim presented is not payable by the county or is not a proper county charge, it must be rejected; if they find it to be a proper county charge, but greater in amount than is justly due, the

Board may allow the claim in part and draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment, the claim may be again be considered at the next regular succeeding session of the Board, but not afterwards.

Appeals from actions of the board. Comp. laws, 529.

SEC. 1776. An appeal may be taken from any order, decision or action of the Board while acting in an official capacity, by any person aggrieved thereby, or by any tax payer of the county where any demand is allowed against the county, or when he deems any order, decision or action of the Board illegal or prejudicial to the public interests.

Appeal, how taken. Comp. laws, 529.

Undertaking.

SEC. 1777. The appeal may be taken by filing with the Clerk of the Board within twenty days after the order or decision is made, or the action is taken, a written notice of such appeal and serving a copy thereof upon any person having a beneficial interest, or upon any one of two or more having a joint beneficial interest in such order, decision or action, and filing with the Clerk of the Board an undertaking in the sum of three hundred dollars for the payment of costs, with two sufficient sureties, to be approved by said Clerk or the Probate Judge, verified and conditioned as provided in the Code of Civil Procedure for undertaking on appeal; but no undertaking must be required when the District Attorney or the Probate Judge appears in behalf of the county.

Papers transmitted to district court. Comp. laws, 529.

SEC. 1778. The Clerk of the Board on receiving the notice and undertaking, when an undertaking is required, must certify to the District Court a transcript of the record showing the order, decision or action of the Board appealed from, and therewith transmit the notice of appeal, undertaking, and any account, bill, contract or paper presented to the Board in connection with the subject matter of the appeal.

Hearing and decision on appeal. Comp. laws, 529.

SEC. 1779. On the appeal the matter must be heard anew, and the Court may affirm, reverse or modify the order, decision, or action appealed from, with or without costs.

Claimant may sue, when, recover costs, when. N. S.

SEC. 1780. A claimant dissatisfied with the rejection of his claim or demand, or with the amount allowed him on his account, may sue the county therefor at any time within six months after the final action of the Board, but not afterward; and if in such action judgment is recovered for more than the Board allowed, on presentation of the judgment the Board must allow and pay the same, together with the costs adjudged; but if no more is recovered than the Board allowed, the Board must pay the claimant no more than was originally allowed.

What waraants may specify, how presented. Comp. laws, 575.

SEC. 1781. Warrants drawn by order of the Commissioners on the County Treasury for the current expenses during each year, must specify the liability for which they are drawn, and when they accrued, and must be paid in the order of presentation to the Treasurer. If the fund is insufficient to pay any warrant, it must be registered, and thereafter paid in the order of its registration.

In what transactions commissioners not to be interested. Comp. laws, 528.

SEC. 1782. No member of the Board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the

Board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes.

Transfer of application, in what cases made. N. S.

SEC. 1783. Whenever an application is made to the Board for an order, franchise, or license, relating to any toll road, bridge, ferry, or other subject over which the Board has jurisdiction, in which a majority of the Board are not disinterested, the application, by order of the Board, must be transferred to the District Court of the County; the Clerk of the Board must thereupon certify the application and all orders and papers relating thereto to the Court to which the transfer is ordered: and thereafter the court to which the same is certified has full jurisdiction to hear and determine the application.

Notices, how given.

SEC. 1784. All public notices of proceedings of, or to be had, before the board, not otherwise specially provided for, must be published in a newspaper published in the county; if there is no such newspaper, then copies thereof must be posted at the court house door, and at two other public places in the county.

Leaves of absence. Comp. laws, p. 522.

SEC. 1785. The Board of Commissioners may grant to any county officer of their respective counties (except the Probate Judge or a member of the Board of Commissioners of such county) leave of absence from their county and the Territory, for a period not exceeding ninety days, during which time the absence of such officer does not work a forfeiture of his office; *Provided*, That before the granting of such leave of absence, the officer must appoint a deputy to perform the duties of his office, as by statute in such cases made and provided, and must present to, and file with the Board of Commissioners of his county, the written consent of each person liable on his official bond, that such leave of absence be granted.

Claims in favor of commissioners. N. S.

SCE. 1786. All claims against the county presented by members of the Board of Commissioners for per diem and mileage, or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

Annual statement, when made, contents of. N. S.

SEC. 1787. The Board must have prepared by the Clerk, and under their direction, prior to their annual January meeting, a statement showing:

1. The indebtedness of the county, funded and floating, stating the amount of each class and the rate of interest borne by such indebtedness or any part thereof;
2. A concise description of all property owned by the county, with an approximate estimate of the value thereof, and the amount of cash in the county treasury and its several funds.

Fire guard. 10 ses., 13.

SEC. 1788. When a petition, signed by at least five of the tax payers residing in any town or village, is presented to the Board asking that a committee be appointed for the purpose of inspecting chimneys, stove pipes, and fire-places, the Board at their first regular meeting must act upon such petition by appointing not less than three nor more than five tax payers of such town or village, who shall constitute a "Fire Guard" within such limits as may be designated by the Commissioners.

Same. 10 ses., 13.

SEC. 1789. They are invested with the power to examine fire places, stove pipes, chimneys, and fire escapes in all public and private buildings within the limits designated by the Commissioners, and may, when in their opinion there exists danger from fire in any building, give a notice in writing to the owner or occupant thereof, requiring him to repair, alter, or remove defective or insecure chimneys, fireplaces, stoves, or stove pipes, within a reasonable time; and upon his refusal or failure to comply with such written order, the Board may have the same done at the expense of such owner or occupant.

Same. 10 ses., 13.

SEC. 1790. To enforce the payment of such alterations and repairs, the Fire Guard may seize so much of the personal property of any person liable and refusing or neglecting to pay for such alterations and repairs, as will be sufficient to pay for the same and costs of seizure, which costs shall not exceed three dollars, and may sell the same at any time or place upon giving a verbal notice of one hour previous to such sale.

Commissioner, neglect of duty.

SEC. 1791. Any Commissioner who neglects or refuses to perform any duty imposed on him without just cause therefor, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently or corruptly attempts to perform an act, as Commissioner, unauthorized by law, in addition to the penalty provided in the Penal Code, forfeits to the county five hundred dollars for every such act.

Camp fires.

Notice. 14 ses.

SEC. 1792. It is the duty of the Board of County Commissioners of each county in this Territory, within sixty days after this act takes effect, to cause to be erected in a conspicuous place at the side of each public highway, and at such places as they may deem proper, a notice in large letters, substantially as follows: "Camp fires must be totally extinguished before breaking camp, under penalty of not to exceed six months imprisonment or three hundred dollars fine, or both as provided by law.

(Signed.) ———
County Commissioners."

The erection and maintenance of such notices shall be at the expense of the respective counties, and at least ten in number of such notices shall be posted in each and every county in this Territory.

[Act Feb. 10, 1887.]

CHAPTER III.

COUNTY OFFICERS.

ARTICLE I.

General Provisions.

SECTION
1810. Age, citizenship and residence as to county officers.
1811. Same as district and township officers.
1812. County officers enumerated.
1813. Township and other inferior officers.
1814. County officers, when elected and term of office.
1815. May appoint deputies.
1816. Same.
1817. Same.
1818. Deputy to act during absence or vacancy.
1819. Appointment to be in writing.
1820. Official name of principal officer include deputies.
1821. Vacancies, how filled.
SECTION
1822. What offices to be kept at county seat.
1823. Civil penalty for non-performance of duty attached to official bond.
1824. County officers may administer oaths.
1825. Certain officers must reside at county seat.
1826. Absence of county officers from Territory.
1827. Certain officers prohibited from practicing law.
1828. Official bonds classified and amounts thereof.
1829. When amount of bond is not fixed by law.

SECTION 1810. No person is eligible to a county office who at the time of his election or appointment is not of the age of twenty-one years, a citizen of the Territory, and for six months prior to the day of his appointment or election, an elector of the county in which the duties of the office are to be exercised.

Qualifications for county officer. 13 ses., 58.

SEC. 1811. No person is eligible to a district or precinct office who is not of the age of twenty-one years, a citizen of the Territory, and for six months prior to the day of his appointment or election, an elector of the district or precinct in which the duties of the office are to be exercised, or for which he is elected.

Qualifications. 13 ses., 58.

SEC. 1812. The officers of a county are:

County officers enumerated.

A Probate Judge;
A Treasurer who is ex officio Public Administrator;
A Sheriff;
A District Attorney;
A Recorder, who is ex officio Auditor;
An Assessor, who is ex officio Tax Collector;
A Surveyor;
A School Superintendent;
A Coronor;
A Board of County Commissioners.

SEC. 1813. The officers of precincts are two Justices of the Peace, one Constable, and such other inferior and subordinate officers as are provided for elsewhere in this code or by the Board of Commissioners.

Township and other officers.

SEC. 1814. All county district and precinct officers must be elected at the general election in November, eighteen hundred and eighty-eight, and every two years thereafter, and hold office for two years from the second Monday of January next after their election, and until their successors, respectively, are elected and qualified. Every officer now in office must hold his office and exercise the duties thereof until his successor is elected at the general election in eighteen hundred and eighty-eight, and duly qualified.

County officers, when elected. term of office. 13 ses., 57.

May appoint deputies. Comp. laws, 546.

SEC. 1815. Every county officer except Probate Judge, Commissioner, School Supperintendent and Coroner may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office.

Same. Comp. laws, 822.

SEC. 1816. Any county officer who may be granted leave of absence from the county wherein he resides and holds office, is reqired to appoint a good and sufficient deputy to act for him and in his place while absent.

Same. Comp. laws, 822.

SEC. 1817. Should any county officer who is granted leave of absence fail to appoint a deputy as required by this chapter, the act granting such leave of absence is null and void and the office vacant, and the vacancy must be filled by the Board of County Commissioners of the county.

Deputy to act during absence or vacancy. 8 ses., 546-557.

SEC. 1818. When a county officer has more than one deputy he must designate one, by indorsement upon his appointment as senior deputy, and in case of a vacancy in the office, by death, resignation, or otherwise, or of the officer's absence, or inability to perform the duties of his office, such deputy must continue to perform the duties of the office during such vacancy, absence, or inability.

Appointment must be in writing and filed. Comp. laws, 546.

SEC. 1819. The appointment of deputies and subordinate officers must be made in writing, and filed in the office of the County Recorder.

Official name of principal officer includes deputies. Comp. laws, 546.

SEC. 1820. Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

Vacancies, how filled. 13 ses., 116.

SEC. 1821. All vacancies in county, district and precinct offices are filled by appointments made by the Board of Commissioners. Appointees hold until the vacancies are filled by election.

Offices to be kept at county seat. Comp laws, 545-557-577.

SEC. 1822. Sheriffs, Recorders, Treasurers, Assessors and District Attorneys must have their offices at the county seat, and keep them open for the transaction of business from nine o'clock A. M. till five o'clock P. M. every day in the year except holidays. The Probate Judge must have an office at the county seat, and must establish such rules and hours for official business as may be necessary for the dispatch thereof.

Penalty for non-performance of duty.

SEC. 1823. Whenever, except in criminal prosecutions, any special penalty, forfeiture or liability is imposed on any officer for non-performance or mal-performance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

Officers may administer oaths.

SEC. 1824. Every county officer and every Justice of the Peace may administer and certify oaths.

Certain officers to reside at county seat.

SEC. 1825. The following officers must reside at the county seat of their respective counties: The Probate Judge, the Sheriff, the Tax Collector, the District Attorney, the Recorder.

Absence of officers from the Territory.

SEC. 1826. No county officer must absent himself from the Territory for more than ten days, unless with the consent of the Board of the County Commissioners.

Officers prohibited from practicing law. Comp. laws, 552.

SEC. 1827. Sheriffs, Clerks of Courts and their deputies, and Constables are prohibited from practicing law or acting as attorneys or counselors at law, or having as a partner a lawyer or any one who acts as such.

Official bonds classified, amounts thereof.

SEC. 1828. County, district and precinct officers must execute official bonds in the following amounts:

1. County Commissioners each in the sum of five thousand dollars;
2. Probate Judges each in the sum of five thousand dollars;
3. County Treasurers each in double the probable amount of money that may at any time come into his hands as such Treasurer, to be fixed by the Board of County Commissioners, but in no case to be less than ten thousand dollars;
4. Sheriffs each in the sum of ten thousand dollars;
5. County Recorders each in the sum of not less than five nor more than twenty thousand dollars, to be fixed by the Board of County Commissioners and to cover his duties and liabilities as Recorder, Auditor and Clerk of the Board of County Commissioners; 8 ses., 557.
6. Assessors each in the sum of five thousand dollars; 8 ses., 480.
7. Tax Collectors each in the sum of not less than five, nor more than twenty thousand dollars, to be fixed by the Board of County Commissioners; 11 ses., 235.
8. District Attorneys each in the sum of two thousand dollars; 11 ses., 251.
9. School Superintendents each in the sum of one thousand dollars;
10. County Surveyors each in the sum of two thousand dollars;
11. Coroners each in the sum of one thousand dollars;
12. Public administrators each in the sum of two thousand dollars;
13. Justices of the Peace and Constables, each in the sum of not less than five nor more than ten hundred dollars.

Bond not fixed by law. SEC. 1829. When the amount of the bond to be given by any county, district or precinct officer is not fixed by law the amount must be fixed by the Board of Commissioners.

ARTICLE II.

Probate Judge.

SECTION
1835. Duty of Probate Judge.
SECTION
1836. Fire proof office for.

Duty of probate judge. SECTION 1835. The Probate Judge must:
1. Perform the duties of a magistrate;
2. Hold Probate Courts;
3. Take and certify acknowledgments to the execution of instruments in writing and grant certificates to the official character of the county officers;
4. Perform such other duties as are prescribed in any of the laws of this Territory.

Office for probate judge. 14 ses. SEC. 1836. (Sec. 1.) It shall be the duty of the Board of County Commissioners of the different counties of the Territory when the county owns a fire proof building, to provide an office in said building for the uses of the Probate Judge and for the safe keeping and protection of all probate records.

[Act Feb. 10, 1887, in effect immediately.]

ARTICLE III.

County Treasurer.

SECTION
1840. Duty of County Treasurer.
1841. To receive no money, except on certificate of Auditor.
1842. Must receipt for money.
1843. Mode of redeeming warrants.
1844. Registry of warrants, when no funds.
1845. Notice of redemption of warrants.
1846. What it must state, and how published.
1847. Priority in payments of warrants.
1848. Funds reserved sixty days therefor.
1849. Must note the interest paid on warrant.
1850. Settlements, when and how made monthly and annually.
1851. Report to Board of Commissioners each session.
1852. Penalty for not reporting.

SECTION
1853. When he must sue District Attorney.
1854. When he must sue Coroner.
1855. What he must do with property received from Coroner.
1856. Money from Coroner in Treasury may be demanded within six years.
1857. Treasurer must not loan public money or make general deposit.
1858. Commissioners may suspend Treasurer.
1859. No commissions allowed.
1860. Books and vouchers subject to inspection.
1861. Treasurer must permit Auditor to examine his books, etc.

Duties of county treasurer. Comp. laws, p. 575.

SECTION 1840. The County Treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law:

2. File and keep the certificates of the Auditor delivered to him when moneys are paid into the Treasury;

3. Keep an account of the receipt and expenditure of all such moneys, in books provided for the purpose; in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;

4. So keep his books that the amounts received and paid out on account of separate Funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;

5. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the County Auditor;

6. Disburse the county moneys only on county warrants issued by the County Auditor; based on orders of the Board of Commissioners, or as otherwise provided by law.

No money received on auditor's certificate.

SEC. 1841. He must receive no money into the Treasury unless accompanied by the certificate of the Auditor.

Must receipt for money. Rev. act, 92. Comp. laws, p. 575.

SEC. 1842. When any money is paid to the County Treasurer he must give to the person paying the same a receipt therefore, which must forthwith be deposited with the the County Auditor, who must charge the Treasurer therewith and give the person paying the same a receipt.

Mode of redeeming warrants. Comp. laws, p. 575.

SEC. 1843. When a warrant is presented for payment if there is money in the treasury for that purpose, he must pay the same, and write on the face thereof "Paid", the date of payment and sign his name thereto.

Registry of warrants, when no funds. Comp. laws, p. 575.

SEC. 1844. When any warrant is presented to the Treasurer for payment and the same is not paid for want of funds, the Treasurer must indorse thereon, "Not paid for want of funds," annexing the date of presentation and sign his name thereto; and from that time until paid the warrant bears seven per cent. per annum interest.

Notice of redemption of warrants. 11 ses., 250, sec. 11.

SEC. 1845. When there are sufficient moneys in the treasury to pay the warrants drawing interest, the Treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the Court House door, stating therein that he is ready to pay such warrants. From the first publication or posting of such notice, such warrants cease to draw interest.

What it must state and how published.

SEC. 1846. In advertising warrants under the provisions of this section in any newspaper, the Treasurer must not publish the warrants in detail, but give notice only that county warrants presented for payment prior to such a date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the Treasurer must designate such payable warrants in the advertisement.

Priority in payment of warrants. Rev. act, sec. 13. 9 ses., 21.

SEC. 1847. Warrants drawn on the treasury and properly attested, are entitled to preference as to payment out of moneyes in the treasury properly applicable to such warrants according to the priority of time in which they were presented.

The time of presenting such warrants must be noted by the Treasurer and upon the receipt of moneys into the treasury not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrants.

Funds reserved sixty days. Rev. act, sec. 13.

SEC. 1848. Should such warrants not be re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the Treasurer applied to the payment of unpaid warrants next in order of registry. The Board of Commissioners may, on application and presentation of warrants, property indorsed, which have been advertised, pass an order directing the Treasurer to pay them out of any money in the treasury not otherwise appropriated.

Must note the interest paid on warrant. Sec. 12.

SEC. 1849. When the Treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of such interest distinct from the principal.

Settlements, when and how made. Sec. 18.

SEC. 1850. The Treasurer must settle his accounts relating to the collection, care and disbursement of public revenue, of whatsoever nature and kind, with the Auditor, on the first Monday of each month. For the purpose of making such settlement, he must make out a statement under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must in such settlements, deposit all warrants redeemed by him and take the Auditor's receipt therefor. He must also make a full settlement of all accounts with the Auditor annually on the second Monday of January, in the presence of the Commissioners, who have a supervisory control thereof.

Report to board of commissioners each session.

SEC. 1851. Each County Treasurer must make a detailed report at every regular meeting of the Board of Commissioners of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the Treasury and the amount of disbursements, together with the debts due to and from the county may clearly and distinctly appear.

Penalty for not reporting.

SEC. 1852. If any County Treasurer neglects or refuses to settle or report as required in sections 1850, 1851, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the Board of Commissioners must institute suits for the recovery thereof.

When he must sue district attorney.

SEC. 1853. If the District Attorney refuses or neglects to account for and pay over money received by him as required by law, the County Treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action in addition to the amount so received, fifty per cent. thereon by way of damages.

When he must sue coroner. Comp. laws, p. 569.

SEC. 1854. If the Coroner or any Justice of the Peace acting as Coroner, fails to deliver to the Treasurer within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the legal representative of the decedent as required by law, the Treasurer must proceed against the Coroner, or Justice acting as Coroner, to recover the same by civil action in the name of the county.

Property received from coroner, disposal of. Comp. laws, 569.

SEC. 1855. The Treasurer upon receiving from the Coroner or Justice acting as Coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in like manner he must within thirty days sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

Money from coroner in treasury may be demanded within six years. Comp. laws, 569.

SEC. 1856. If the money in the treasury is demanded within six years by the legal representatives of the decedent, the Treasurer must pay it to them, after deducting the fees and expenses of the Coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the Board of Commissioners.

Treasurer must not loan public money or make general deposit. Rev. act, 92.

SEC. 1857. The County Treasurer must keep all moneys belonging to this Territory or to any county of this Territory in his own possession until disbursed according to law. He must not place the same in the possession of any person to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but nothing in this section prohibits him from making special deposits for the safe keeping of the public moneys.

Commissioners may suspend treasurer.

SEC. 1858. Whenever an action based upon official misconduct is commenced against any County Treasurer, the Commissioners, may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

No commissions allowed.

SEC. 1859. In case of the death of any County Treasurer his legal representatives must deliver up all official moneys, books, accounts, papers, and documents which come into their possession. No percentage must be allowed to the Treasurer on any money by him received from his predecessor in office or from the legal representatives of such predecessor.

SEC. 1860. The books, accounts, and vouchers of the Treasurer are at all times subject to the inspection and examination of the Board of Commissioners and Grand Jury.

Books, etc., subject to inspection.

SEC. 1861. The Treasurer must permit the County Commissioners and Auditor to examine his books and count the money in the treasury whenever they may wish to make an examination or counting.

Auditor and commissioners may examine books.

ARTICLE IV.

Sheriff.

SECTION
1870. "Process" and "notice" defined.
1871. Duties of Sheriff.
1872. Service and execution of process.
1873. Return primary evidence.
1874. Penalty for non-return of process, etc
1875. Liable for refusing to levy.
1876. Damages for refusing to pay over money.
1877. Liable for permitting an escape.
1878. Liable for a rescue.
1879. No action for escape or rescue after recapture.
1880. Direction to Sheriff must be in writing.
1881. When office of Sheriff deemed vacant.
1882. When Sheriff justified in executing process.
1883. Officer to exhibit process.
1884. Sheriff to act as crier.
SECTION
1885. Service on Sheriff, how made.
1886. Coroner to execute process when Sheriff is a party.
1887. Elisors to act in cases designated.
1888. Other duties.
1889. When Sheriff or officer perform service for Territory.
1890. Proceedings in cases of arrest of Sheriff, etc.
1891. Powers and duties of elisors.
1892. County Recorder to issue certificates to new Sheriff.
1893. Sheriff to deliver county property to successor.
1894. Sheriff to acknowledge transfer of same.
1895. Sheriff to complete process begun, etc.
1896. When Sheriff refuses to deliver to successor.

SECTION 1870. "Process" as used in this article includes all writs, warrants, summons and orders of courts of justice or judicial officers.

"Process" and "Notice" defined. N. S.

"Notice" includes all papers and orders (except process) required to be served in and proceeding before any court, Board or officer, or when required by law to be served independently of such proceeding.

SEC. 1871. The Sheriff must:

Duties of sheriff. Comp. laws, 544.

1. Preserve the peace;

2. Arrest and take before the nearest magistrate for examination, all persons who attempt to commit or who have committed a public offense;

3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge;

4. Attend all courts, except Justices' and Probate Courts, at their respective terms held within his county, and obey their lawful orders and directions;

5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;

6. Take charge of and keep the county jail and the prisoners therein;

7. Indorse upon all process and notices the year, month, day, hour and minute of reception, and issue therefor to the person delivering it on payment of fees, a certificate showing the names of the parties, title of paper and time of reception;

8. Serve all process and notices in the manner prescribed by law;

9. Certify under his hand upon process or notices the manner and time of service, or if he fails to make service, the reasons of his failure and return the same without delay.

Services and execution of process. Comp. laws, p. 545.

SEC. 1872. When process or notices are returnable to another county, he may inclose such process or notice in an envelope addressed to the officer from whom the same emanated and deposit it in the post-office, prepaying postage.

Return prima facie evidence. N. S.

SCE. 1873. The return of the Sheriff upon process or notices, is prima facie evidence of the facts in such return stated.

Penalty for non-return of process Comp. laws, p. 545.

SEC. 1874. If the Sheriff does not return a notice or process in his possession with the necessary endorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

Liable for refusal to levy. Comp. laws, p. 545.

SEC. 1875. If the Sheriff to whom a writ of execution is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon and sold, he is liable to the creditor for the value of such property.

Damages for refusing to pay over money. Comp. laws, 545.

SEC. 1876. If he neglects or refuses to pay over on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with twenty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered by such person.

Liability for permitting an escape. Comp. laws, p. 549.

SEC. 1877. A Sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;
2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;
3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;
4. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation and exculpation.

Liable for a rescue. Comp. laws, 549.

SEC. 1878. He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

No action for escape or rescue after recapture. Comp. laws, p. 549.

SEC. 1879. An action cannot be maintained against the Sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the Sheriff.

Direction to a sheriff must be in writing Comp. laws, p. 551.

SEC. 1880. No direction or authority by a party or his attorney to a Sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, is available to discharge or excuse the Sheriff from a liability for neglect or misconduct, unless it is contained in a writing, signed by the attorney of the party, or by the party if he has no attorney.

When office deemed vacant. Comp. laws, 551.

SEC. 1881. When the Sheriff is committed under an execution or commitment, for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant.

SEC. 1882. A Sheriff, or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

When sheriff justified in executing process. Comp. laws, 552.

SEC. 1883. The officer executing process must then, and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

Officer to exhibit process. Comp. laws, 552.

SEC. 1884. The Sheriff in attendance upon Court must act as the Crier thereof, call the parties and witnesses and all other persons bound to appear at the Court, and make proclamation of the opening and adjournment of the Court, and of any other matter under its direction.

Sheriff to act as crier. Comp. laws, 552.

SEC. 1885. Service of a paper, other than process, upon the Sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

Service on sheriff, how made. Comp. laws, 545.

SEC. 1886. When the Sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the Sheriff to execute, must be executed by the Coroner of the county.

Coroner to execute process, when. Comp. laws, 552.

SEC. 1887. Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the Court, the Judge thereof, or a Probate Judge, and denominated an Elisor in the following cases:

Elisors to act in cases designated. Comp. laws, 552-53.

1. When the Sheriff and Coroner are both parties;
2. When either of these officers is a party and the process is against the other; and
3. When either of these officers is a party and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the Court in which the proceeding is pending, or the Judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause, would not act promptly or impartially.

When the process is delivered to an Elisor he must execute and return it in the same manner as the Sheriff is required to execute similar process.

SEC. 1888. The Sheriff must perform such other duties as are required of him by law.

Other duties.

SEC. 1889. When the Sheriff or other officer is legally required to perform a service in behalf of the people of this Territory, which is not chargeable to his county or a private person, his account and claim for compensation therefor, must be filed with the Territorial Controller, and by him transmitted to the Legislature with his report thereon, at its first session after the rendition of such service for its action thereon.

When sheriff or officer perform service for Territory. Comp. laws, 551.

SEC. 1890. If the Sheriff, on being arrested by a Coroner or if the Sheriff, or Coroner on being arrested by an Elisor, or if another person in an action in which both the Sheriff and Coroner are plaintiffs upon an order of arrest in a civil action, neglect to give bail or make a deposit of money instead thereof, or if the Sheriff be arrested on execution against his body, or on a warrant of attachment, he or they must be confined in a house other than that of the Sheriff, or the county jail, in the same manner as the Sheriff is required to

Proceedings in case of arrest of sheriff, etc. Comp. laws, 553.

confine a prisoner in the county jail; the house in which he is thus confined thereupon becomes for that purpose the county jail.

Powers and duties of elisors. Comp. laws, 553.

SEC. 1891. An Elisor appointed to execute process and orders in the case mentioned in this article, is invested with the powers, duties, and responsibilities of the Sheriff, in the execution of the process, or orders, and in every matter incidental thereto.

County recorder to issue certificate to new sheriff, etc. Comp. laws, 550.

SEC. 1892. When a new Sheriff is elected and has qualified, and given the security required by law, the County Recorder must give a certificate of that fact, under his seal of office, upon the service of which on the former Sheriff his powers cease, except as otherwise provided in this article.

Sheriff to deliver county property to successor. Comp. laws, 550.

SEC. 1893. Within three days after the service of the certificate upon the former Sheriff, he must deliver to his successor:

First. The jail of the county, with its appurtenances, and the property of the county therein;

Second. The prisoners then confined in the county jail;

Third. The process, orders and other papers in his custody, authorizing or relating to the confinement of the prisoners;

Fourth. All process and orders for the arrest of a party, and all papers relating to the summoning of a grand or trial jury, which have not been fully executed;

Fifth. All executions, attachments, and final process, except those which he has executed or has begun to execute, by the collections of money or a levy on property.

Sheriff to acknowledge transfer of same. Comp. laws, 550.

SEC. 1894. He must also at the same time, deliver to the new Sheriff a written transfer of the property, process, papers, and prisoners delivered, specifying the process or order by which each prisoner delivered was committed and detained. The new Sheriff must thereupon acknowledge, in writing on a duplicate of the transfer, the receipt of the property, process, papers, and prisoners therein specified.

Sheriff to complete process begun, etc. Comp. laws, 550.

SEC. 1895. Notwithstanding the election and qualification of a new Sheriff, the former Sheriff must return all process and orders before and after judgment, which he has fully executed, and must complete the execution of all final process which he has begun to execute previous to the expiration of his term of office.

When sheriff refuse to deliver to his successor. Comp. laws, 550.

SEC. 1896. If the former Sheriff refuse or neglect to deliver to his successor the jail, process, papers, and prisoners in his charge, the new Sheriff may, notwithstanding, take possession of the jail, and of the prisoners confined therein, and the Probate Court, or the Probate Judge, may, upon application, order the delivery of the process and papers.

ARTICLE V.

Auditor.

SECTION
2005. Auditor to draw warrants and settle accounts.
2006. Warrants must specify what.
2007. Settlements with debtors to the county.
2008. To keep accounts, file receipts, etc.
2009. Warrants of Auditor to be numbered.
SECTION
2010. Quarterly statements concerning collection of revenue to be made, when.
2011. Other duties.
2012. Auditor to report to Controller.
2013. Bond where filed and recorded.

Auditor to draw warrants and settle accounts. Comp. laws, 564, sec. 26

SECTION 2005. The Auditor must draw warrants on the County Treasurer in favor of all persons entitled thereto, in payment of all claims and demands chargeable against the county which have been legally examined, allowed and ordered paid by the Board of Commissioners; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal.

Warrants must specify, what.

SEC. 2006. All warrants must distinctly specify the liability for which they are drawn, and when it accrued.

Settlement with debtors to the county. Comp. laws, 575.

SEC. 2007. The Auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the Treasurer, and upon the presentation and filing of the Treasurer's receipt therefor, give to such person a discharge and charge the Treasurer with the amount received by him.

To keep accounts, file receipts, etc. Comp. laws, 563.

SEC. 2008. The Auditor must keep accounts current with the Treasurer, and when any person deposits with the Auditor any receipt given by the Treasurer for any money paid into the treasury, the Auditor must file such receipt and charge the Treasurer with the amount thereof.

Warrants of auditor to be numbered. Comp. laws, 564.

SEC. 2009. All warrants issued by the Auditor during each year commencing with the first Monday in January, must be numbered consecutively, and the number, date and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must at the time they are issued, be registered by him.

Quarterly statements, when made. Rev. act, 55.

SEC. 2010. The Auditor and Treasurer of each county must, on the second Monday in January, April, July and October, make a joint statement to the Board of Commissioners, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury, the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what fund; the total amount of warrants drawn and unpaid, and accounts or claims audited, or allowed and unpaid, and the fund out of which they are to be paid, and generally make a full and specific showing of the financial condition of the county.

Other duties.

SEC. 2011. The Auditor must discharge such other duties as are required by law.

Auditor to report to controller. 12 ses., 65.

SEC. 2012. Every County Auditor must, on the first Monday of November in each year, transmit to the Territorial Controller an exact and full statement under oath, of the financial condition of his county; and said report or statement must plainly set forth the amount of indebtedness, if any, the amount of funds, on hand, if any, and any and all liabilities of the county.

Bond of recorder. Comp. laws, 557.

SEC. 2013. The bonds of the Recorder and Auditor must be filed by the Probate Judge in the Probate Court of the county, and a copy thereof duly recorded by the County Recorder, and when so recorded, fully attested by the Probate Judge.

ARTICLE VI.

Recorder.

SECTION
2023. Recorder to procure record-books.
2024. What to be recorded.
2025. Indexes to be kept by Recorder.
2026. Records of certificates of sale
2027. To record decrees or partition.
2028. Filing of copy to impart notice.
2029. May keep two or more indexes in same volume.

SECTION
2030. Recorder's duty on receipt of instrument to be recorded.
2031. Recorded instruments to be indorsed.
2032. Recorder to make searches.
2033. Liable for neglect of certain duties.
2034. Fees to be prepaid.
2035. Records to be open for inspection.

Recorder to procure record books. Comp. laws, 557.

SECTION 2023. The Recorder must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the Board of Commissioners. He has the custody of and must keep all books, records, maps, and papers deposited in his office.

What to be recorded Comp. laws, 558.

SEC. 2024. He must, upon the payment of his fees for the same, record separately, in large and well-bound separate books, in a fair hand:

1. Deeds, grants, transfers and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate and leases which have been acknowledged or proved;
2. Mortgages of personal property;
3. Certificates of marriage and marriage contracts;
4. Wills admitted to probate;
5. Official bond;
6. Notices of mechanics' liens;
7. Transcripts of judgments which by law are made liens upon real estate;
8. Notices of attachments upon real estate;
9. Notices of the pendency of an action affecting real estate, the title thereto or possession thereof;
10. Instruments describing or relating to the separate property of married women;
11. Notices of pre-emption claims;
12. Such other writings as are required or permitted by law to be recorded.

Indexes to be kept by recorder. Comp. laws, 558 to 561.

SEC. 2025. Every Recorder must keep:

1. An index of deeds, grants, and transfers, labeled "Grantors", each page divided into four columns, headed respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants or transfers", and "Where recorded";
2. An index of deeds labeled "Grantees", each page divided into four columns, headed respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, or transfers", and "Where recorded";
3. Two indexes of mortgages, labeled respectively: "Mortgagors of real property", "Mortgagors of personal property", with the pages thereof divided into five columns, headed respectively: "Names of mortgagors", "Names of mortgagees", "Date of mortgages", "Where recorded", "When discharged";
4. Two indexes of "Mortgagees", labeled respectively: "Mortgagees of real property", "Mortgagees of personal property", with the pages thereof divided into five columns, headed respectively: "Names of mortgagees", "Names of mortgagors", "Date of mortgages", "Where recorded", "When discharged";

5. Two indexes of release of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagors", "Releases of mortgages of personal property—mortgagors", with the pages thereof divided into six colums, headed respectively: "Parties releasing", "To whom releases are given", "Date of releases", "Where releases are recorded", "Date of mortgages released", "Where mortgages released are recorded";

6. Two indexes of releases of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagees", "Releases of mortgages of personal property—mortgagees", with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released", "Parties releasing", "Date of releases", Where recorded", "Date of mortgages released", "Where mortgages released are recorded";

7. An index of powers of attorney, labeled "Powers of Attorney", each page divided into five colums headed respectively: "Names of parties executing the powers", "To whom powers are executed", "Date of powers", "Date of recording", "Where powers are recorded";

8. An index of leases, labeled "Lessors". each page divided into four columns, headed respectively: "Names of lessors". "Names of lessees", "Date of leases", "When and where recorded";

9. An index of leases, labeled "Lessees": each page divided into four columns, headed respectively: "Names of lessees", "Names of lessors", "Date of leases", "When and where recorded";

10. An index of marriage certificates, labeled "Marriage certificate—Men", each page divided into six columns, headed respectively: "Men married". "To whom married", "When married". "By whom married". "Where married", "Where certificates are recorded":

11. In index of marriage certificates, labeled "Marriage certificates—Women", each page divided into six columns, headed respectively: "Women married" (and under this head placing the family names of the women), "To whom married", "When married". "By whom married". "Where married", "Where certificates are recorded";

12. An index of assignments of mortgages and leases, labeled "Assigments of Mortgages and Leases—Assignors", each page divided into five columns, headed respectively: "Assignors", "Assignees", "Instruments assigned", "Date of assignments", "When and where recorded";

13. An index of assignments of mortgages and leases, labeled "Assignments of Mortgages and Leases—Assignees", each page divided into five columns. headed respectively: "Assignees", "Assignors", "Instruments assigned", "Date of assignments", "When and where recorded";

14. An index of wills. labeled. "Wills". each page divided into four columns. headed respectively: "Names of testators". "Date of wills". "Date of Probate." "When and where recorded";

15. An index of official bonds, labeled "Official Bonds", each page divided into five columns, headed respectively: "Names of officers". "Names of offices". "Date of bonds", "Amount of bonds". "When and where recorded".

16. An index of notices of mechanics' liens, labeled "Mechanics' liens", each page divided into three columns, headed respectively, "Parties claiming liens", "Against whom claimed", "Notices", "When and where recorded".

17. An index to transcripts of judgment, labeled "Transcripts of judgments", each page divided into seven columns, headed respectively, "Judgment debtors", "Judgment creditors", "Amount of judgments", "Where recovered", "When recovered", "When transcript filed", "When judgment satisfied".

18. An index of attachments, labeled "Attachments", each page divided into six columns, headed respectively, "Parties against whom attachments are issued", "Parties issuing attachments", "Notiices of attachments", "When recorded", "Where recorded", "When attachments discharged".

19. An index of notices of the pendency of actions, labeled "Notices of actions", each page divided into three columns, headed respectively, "Parties to the actions", "Notices when recorded", "Where recorded".

20. An index of the separate property of married women labeled "Separate property of married women", each page divided into five columns, headed respectively "Names of married women", "Names of their husbands", "Nature of instruments recorded", "When recorded", "Where recorded".

21. An index of possessory claims, labeled "Possessory claims", each page divided into five columns, headed respectively, "Claimants", "Notices", "When received", "Date of notices", "When and where recorded".

22. An index of homesteads, labeled "Homesteads",each page divided into five columns, headed respectively, "Claimants", "Date of declaration", "When and where recorded", "Abandonment", "When and where recorded".

23. An index of agreements and bonds affecting the title of real property, labeled "Real property agreements", each page divided into four columns, headed respectively, "Vendors", "Vendees", "Date of agreement", "When and where recorded".

24. An index of mining claims, labeled "Mining claims", each page divided into five columns, headed "Locators", "Name of claim", "Date of location", "When filed for record", "Where recorded".

25. An index of water rights, labeled "Water rights", each page divided into four columns labeled "Locators", "Date of notice", "When filed for record", "Where recorded". .

26. A general index of all papers to be entered as they are filed.

Records of certificates of sale.

SEC. 2026. The Recorder must keep in his office a book to be called "Certificates of Sale," and record therein all certificates of sale of real estate sold under execution or under order made in any judicial proceeding. He must also prepare an index thereto, in which in separate columns he must enter the names of the plaintiff in the execution, the defendant in the execution, the purchaser at the sale, and the date of the sale.

To record decrees of partition.

SEC. 2027. The Recorder must file and record with the record of deeds, grants and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county of which he is Recorder.

Filing of copy to impart notice.

SEC. 2028. Every such certified copy of partition from the time of the filing same with the Recorder for record, imparts notice to all persons of the contents thereof; and subsequent purchasers, mortgagees, and lienholders, purchase and take with like notice and effect as if such copy of decree was a duly recorded deed, grant or transfer.

Two or more indexes in same volume. Comp. laws, p. 561.

SEC. 2029. The Recorder may keep in the same volume any two or more of the indexes required to be kept, but the several indexes must be kept distinct from each other, and the volume distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column in the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a Sheriff, the name of the Sheriff and the party charged in the execution must both be inserted in the index under the name of the latter, and when an instrument is recorded to which an execution, administrator or trustee is a party, the name of such executor, administrator or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index under the name of the latter.

Recorder's duty on receipt of instrument to be recorded. Comp. laws, 561.

SEC. 2030. When any instrument, paper or notice authorized by law to be recorded, is deposited in the Recorder's office for record, the Recorder must endorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and at once enter it in the proper index, and must record the same without delay, together with the acknowledgments, proofs and certificates, written upon or annexed to the same, with the plats, surveys, schedule and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded.

Recorded instruments to be indorsed. Comp. laws, 561.

SEC. 2031. He must also indorse upon each instrument, paper or notice, the book and pages in which it is recorded. And must thereafter deliver it upon request to the party leaving the same for record, or to his order.

Recorder to make searches. Comp. laws, 561.

SEC. 2032. The Recorder must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were filed, the extent to which they purport to affect the property to which the relate, and the book and pages where they are recorded.

Liable for neglect of certain duties. Comp. laws, 562.

SEC. 2033. If any Recorder to whom an instrument, proved or acknowledged, according to law, or any paper or notice which may by law be recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper,

or notice within a reasonable time after receiving the same; or,

2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or,

3. Neglects or refuses to keep in his office such indexes as are required by this chapter, or to make the proper entries therein; or,

4. Neglects or refuses to make the searches and to give the certificate required by this chapter; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or,

5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein;—he is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby.

Fees to be prepaid. Comp. laws, 563.

SEC. 2034. He is not bound to record any instrument or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are, if demanded, paid or tendered.

Records to be open for inspection. Comp. laws, 563.

SEC. 2035. All books of record, maps, charts, surveys, and other papers on file in the Recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the Recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

ARTICLE VII.

Assessor and Tax Collector.

SECTION
2040. Assessor and Tax Collector.

Assessor, tax collector. 11 ses., 235.

SECTION 2040. The Assessor must perform all the duties required and imposed by law in the assessement of all property for taxation; he is ex-officio Tax Collector and is authorized and required to receive and collect all per capita or poll taxes, and all taxes assessed upon real and personal property as provided by law, and he has the powers provided by law to enforce the collection and payment of all such taxes.

ARTICLE VIII.

District Attorney.

SECTION
2050. Qualifications.
2051. When Court to appoint.
2052. Duties of District Attorney.
2053. To give receipts for money received.
2054. Not to be retained against the people.
2055. Appointment of counsel for defendant.
2056. Legal adviser of Commissioners.
2057. Must not act as Attorney for claims against his own county.

Qualifications. 11 ses., 251.

SECTION 2050. No person is eligible to the office of District Attorney who is not an attorney and counselor at law, duly licensed to practice as such in the District Courts of the Territory; and District Attorneys must not hold any other county or any Territorial office, during their term of office as such District Attorneys.

When court to appoint. 11 ses., 251.

SEC. 2051. When there is no District Attorney for the county, or when he is absent from the Court, or when he has acted as counsel or attorney for a party accused, in relation to the matter of which the accused stands charged, and for which he is to be indicted or tried, or when he is near of kin to the party to be indicted or tried on a criminal charge, or when he is unable to attend to his duties, the District Court may, by an order, entered in its minutes, stating the cause therefor, appoint some suitable person to perform for the time being, or for the trial of such accused person, the duties of such District Attorney; and the person so appointed has all the powers of the District Attorney while so acting, and may receive the fees of the District Attorney for all services by him performed.

Duties. 11 ses., 251.

SEC. 2052. It is the duty of the District Attorney:

When the people a party.

1. To prosecute or defend all actions, applications or motions, civil or criminal, in the District Court of his county in which the people, or the Territory, or the county are interested, or a party; and when the place of trial is changed in any such action or proceeding to another county, he must prosecute or defend the same in such other county;

In criminal cases.

2. To prosecute all criminal actions before the Probate and Justice's Courts of his county, other than those exercising the police jurisdiction of incorporated cities and villages; and upon the request of magistrates to conduct criminal examinations which may be had before such magistrates; and prosecute or defend all civil actions before the Probate and Justice's Courts of the county in which the people, or the Territory, or the county is interested, or a party;

Advice to commissioners.

3. To give advice to the Board of County Commissioners and other public officers of his county, when requested, in writing, in all public matters in which the people, or the Territory, or county is interested, or relating to the discharge of the official duties of such Board or officers;

Attend grand jury.

4. To attend when requested by any grand jury for the purpose of examining witnesses before them; to give them advice in any legal matter before them; to draw bills of indictment, informations and accusations; to issue subpœnas and other process requiring the attendance of witnesses;

Disposal of money collected.

5. On the first Monday in each month to settle with the Auditor and pay over all money collected or received by him during the preceding month, belonging to the county or Territory to the County Treasurer, and take his receipt therefor, and to file on the first Monday of January in each year in the office of the Auditor of his county an account, verified by his affidavit, of all money received by him during the preceding year by virtue of his office, for fines, forfeitures, penalties or costs, specifying the name of each person from whom he receives the same, the amount received from each and the cause for which the same was paid;

6. To perform all other duties required of him by any law.

Receipt for money. 11 ses., 252.

SEC. 2053. When any District Attorney receives any money for fines, forfeitures, penalties or costs, he must deliver to the person paying the same, duplicate receipts therefor, one of which must be filed by such person in the office of the County Auditor.

Restrictions.

SEC. 2054. No District Attorney must receive any fee or reward for or on behalf of any prosecutor or other individual for services in any prosecution or business to which it is his official duty to attend or discharge; nor be concerned as attorney or counsel for either party other than for the Territory, people or county, in any civil action depending upon the same state of facts upon which any criminal prosecution commenced but not determined, depends; and no law partner of any District Attorney must be engaged in the defense of any suit, action or proceeding in which said District Attorney appears on behalf of the people, Territory or county.

Appointment of counsel for defendant. 11 ses., 253.

SEC. 2055. Whenever upon the trial of a person upon an indictment it appears to the satisfaction of the court that the accused is poor and unable to procure the services of counsel, the Court may appoint counsel to conduct the defense of the accused, for which service such counsel must be paid out of the county treasury, upon the order of the Judge of the Court, the same sum allowed by law to the District Attorney in the same case.

Legal adviser of commissioners. 11 ses., 252.

SEC. 2056. The District Attorney is the legal adviser of the Board of Commissioners. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal.

When he must not act in official capacity.

SEC. 2057. The District Attorney, except for his own services, must not present any claim, account or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

ARTICLE IX.

Surveyor.

SECTION
2067. County Surveyor to make surveys on application made to him.
2068. Surveys of lands in two counties.
2069. Disputes before court concerning title to land in two counties.
2070. Courses to be run by true meridian.

SECTION
2071. Surveyor to employ assistants, when.
2072. When County Surveyor is interested in lands, court to appoint some other person.

Surveyor to make surveys. Comp. laws, p. 794.

SECTION 2067. The Surveyor must make any survey that may be required by the order of Court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made progressively, and preserve a copy of the field notes and calculations of each survey; indorse thereon its proper number, a copy of which and a fair and accurate plat, together with certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law.

Surveys of land in two counties. Comp. laws, 795.

SEC. 2068. Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed may apply to the Surveyor of any county in which any part of such land is situated, and on such application being made the Surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

Titles to land in dispute Comp. laws, 795.

SEC. 2069. When land, the title to which is in dispute before any Court, is divided by a county line, the Court making an order of survey may direct the order to the Surveyor of any county in which any part of the land is situated.

SEC. 2070. In all surveys the courses must be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

Course to be run by true meridian. Comp. laws, 795.

SEC. 2071. If a party, for whom a survey is made does not furnish the chainman and markers, the surveyor may employ the necessary assistants and receive the reasonable hire of all assistance necessarily employed.

Surveyor to employ assistants. Comp. laws.

SEC. 2072. When the County Surveyor is interested in any land the title to which is in dispute and a survey thereof is necessary, the Court must direct the survey to be made by some disinterested person, and the person so appointed is for that purpose authorized to administer and certify oaths. He must return such survey verified by his affidavit annexed thereto, and receive for his services the same fee as the County Surveyor would be entitled to for similar services.

Surveyor interested in lands. Comp. laws, 794.

ARTICLE X.

Coroners.

SECTION
2080. Coroner to hold inquest.
2081. Coroner to bury body, when.
2082. To deliver to County Treasurer property, etc., found on body.
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2086. As Sheriff, duties, powers and fees of.

SECTION 2080. The Coroner must hold inquests as prescribed in the Penal Code.

Coroner to hold inquest.

SEC. 2081. When an inquest is held by the Coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a legal charge against the county.

Coroner to bury body, when. Comp. laws, 569-80.

SEC. 2082. The Coroner must, within thirty days after an inquest upon a dead body, deliver to the County Treasurer or the legal representatives of the deceased, any money or other property found upon the body.

Property to be delivered to county treasurer. Comp. laws, 569.

SEC. 2083. Before auditing or allowing the accounts of of the Coroner, the Commissioners must require him to file with the Clerk of the Board a statement in writing, verified by his affidavit, showing:

Auditing accounts of coroner. Comp. laws, 569.

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;
2. The disposition made of such property.

SEC. 2084. If the office of Coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any Justice of the Peace of the county with the like authority and subject to the same obligations and penalties as the Coroner.

Justice of peace to act as coroner, when. Comp. laws, 569.

SEC. 2085. The Coroner must perform the duties of Sheriff in all cases where the Sheriff is interested, or otherwise incapacitated from serving, and in cases of vacancy by death, resignation, or otherwise, in the office of Sheriff, the Coroner must discharge the duties of such office until a Sheriff is appointed or elected and qualified.

Coroner acting as sheriff, when. Comp. laws, 567.

As sheriff, duties, etc., of. Comp. laws, 567.

SEC. 2086. Whenever the Coroner acts as Sheriff, he possesses the powers and may perform all the duties of Sheriff, and is liable on his official bond, in like manner as a Sheriff would be; and is entitled to the same fees as are allowed by law to the Sheriff for similar services.

ARTICLE XI.

Constables, Justices of the Peace, and Inferior Officers.

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2090. Constables to attend Justices' Courts.
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2092. Duties of Justices of the Peace.
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2095. Failing to pay over money, liability therefor.
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2097. Conservators of the peace.
2098. When to deputize.

Constables to attend justices' courts. Comp. laws, p. 570.

SECTION 2090. Constables must attend the Courts of Justices of the Peace within their townships whenever so required, and within their counties execute, serve, and return all process and notices directed or delivered to them by a Justice of the Peace of such county, or by any competent authority.

Law relating to sheriffs to govern. Comp. laws, 570.

SEC. 2091. In the execution, service and returns of orders, writs, process, and papers, where there are no positive provisions of law prescribing his duties, he must be governed by the laws relating to Sheriffs, so far as they are applicable.

Duties of justices of the peace.

SEC. 2092. Justices of the Peace must perform such duties as are prescribed in the Code of Civil Procedure, and such other duties as are prescribed by law.

Failing to return process. Comp. laws, 570.

SEC. 2093. For failing or refusing to return, as required by law, any writ or process issued by a Justice of the Peace, or any paper connected with any suit or proceeding before such Justice, the Constable is liable to the party at whose instance the suit or process has issued, or for whom the paper is to be served in the sum of fifty dollars, to be recovered of him and his sureties by motion, before a Justice of the Peace of his precinct, five days' notice of the motion having been given.

Neglect to levy, liability therefor. Comp. laws, 571.

SEC. 2094. If any Constable to whom any writ of execution is delivered, neglects or refuses after being required by the creditor, his agent or attorney, to levy upon or sell any property of the defendant, which is subject to execution, he and the sureties on his bond shall be liable to the creditor for the value of such property.

Failing to pay over money, liability therefor. Comp. laws, 571

SEC. 2095. If any Constable neglects or refuses to pay over any money in his hands, which he has collected or received in his official capacity, when demanded by the person entitled thereto, the amount thereof, with thirty-five per cent damages and interest at the rate of ten per cent per month from the time of demand may be recovered from such Constable and his sureties.

Liable on bonds for all official acts. Comp. laws, 571.

SEC. 2096. For any official act or any omission to perform any duty required of him by law, the Constable is liable on his bond to any person injured.

Conservators of the peace. Comp. laws, 571.

SEC. 2097. Constables are conservators of the peace within their respective precincts.

When to deputise. Comp. laws, 787.

SEC. 2098. No Constable of any county of this Territory can appoint or deputize any person to perform any of the duties of his office except in cases of riots or making arrests.

CHAPTER IV.

SALARIES AND FEES OF OFFICE.

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2120. County officers, compensation of, how paid.
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County officers, compensation of, how paid. N. S.

SECTION 2120. The salaries and all compensation of county officers for services rendered the county, must be paid quarterly from the county treasury, upon the warrants of the County Auditor and before being paid to such officers or to any other person, must be allowed and audited by the Board of Commissioners as other claims against the county, and no officer or other person must retain out of any moneys in his hands belonging to the county, any salary, fee, percentage or other amount he claims as due him, but all such moneys must be paid in full into the county treasury. The compensation and fees of county officers, and by whom payable, are as prescribed in the succeeding sections of this chapter, and no other fees or charges of any kind must be made by any such officers than as hereinafter prescribed.

General provisions, commissioners. Comp. laws, 530.

SEC. 2121. In the counties where no other provision is made by law, each member of the Board of County Commissioners must receive from the county for his services two hundred dollars annually, and twenty-five cents for each mile necessarily traveled in going from and returning to his home to attend the sessions of the Board; but no more than one mileage must be received for one term of the Board.

Special provisions, commissioners. 12 ses., 84.

SEC. 2122. In the following named counties the annual compensation of each Commissioner to be paid by the county is as follows:

Alturas. 13 ses., 44.

1. Alturas, five hundred dollars, and forty cents per mile, one way;

Bingham.

2. Bingham, six dollars per day for every day in which he is actually engaged in transacting county business, and fifteen cents per mile both ways;

Bear Lake. 9 ses., 87.

3. Bear Lake, four dollars per day for each day's services rendered the county, to be paid quarterly out of the county treasury;

Nez Perce. 9 ses., 109.

5. Nez Perce, five dollars per day, and forty cents per mile from his place of residence to the county seat computed one way only;

Oneida. 11 ses, 354.

6. Oneida, six dollars per day for each day's attendance at regular sessions of the Board, and twenty cents per mile both ways;

Owyhee. 9 ses., 47.

7. Owyhee, two hundred and fifty dollars, and forty cents per mile one way;

Washington. 13 ses., 201.

Penalty for non-attendance. Comp. laws, 530.

8. Washington, one hundred and fifty dollars, and ten cents per mile both ways, but if any Commissioner fails to attend any day of any regular, special or adjourned session of the Board, six dollars must be deducted from his salary or compensation for each day's non-attendance.

Fees of clerk of probate court.

SEC. 2123. Probate Courts must receive no other compensation or fees from the county, but for other services may receive fees to be paid by the party for whom the services are performed as follows:

In civil actions where the debt or sum claimed does not exceed three hundred dollars, the Judge or Clerk of the Probate Court may receive the same fees as are allowed by law to Justices of the Peace for the same services; in other civil actions the same fees allowed the Clerk of the District Court for the same services. Eor issuing letter testamentary, or of administration, or of guardianship, fifty cents; for writing and posting all the required copies of each notice required to be posted, fifty cents; for each notice including all the copies for publication and posting, in addition to the costs of publication, fifty cents; for recording wills or other papers required by law to be recorded, for each folio, twenty-five cents; for copies of all papers or proceedings in the Probate Court, including certificate and seal when required, for each folio, twenty cents; for entering each order for each folio, twenty-five cents; for all other services the same fees as are allowed the Clerk of the District Court for like services; *Provided,* That if, upon the filing of the appraisement of any estate it appears that the whole estate is not of the value of one thousand dollars, no further Clerk's fees must be charged.

Sheriff's fees, service of process.

SEC. 2126. The Sheriff is allowed and may demand and receive the fees hereinafter specified:

Levy, arrest, delivery of personal property. Comp. laws, 533.

1. For serving a summons and complaint, or any other process and return thereon by which an action or proceeding is commenced, on each defendant, one dollar;
2. For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, one dollar;

Keeper.

3. For his trouble and expense in taking and keeping possession of and preserving property under attachment or execution, or other process, such sum as the Court may order, provided that no more than three dollars per diem be allowed to a keeper;

Taking bonds.

4. For taking bond or undertaking in any case in which he is authorized to take the same, fifty cents;

Copies.

5. For copy of any writ, process or other paper, when demanded or required by law, for each folio, twenty cents;

Notice, etc., posting and advertising.

6. For serving every notice, rule or order, fifty cents;
7. For making and posting notices, and advertising property for sale on attachment or execution, or under any judgment or order of sale, exclusive of the costs of publication, each notice, twenty-five cents per folio;

Writ of restitution.

8. For serving a writ of possession or restitution, putting a person in possession of premises and removing the occupant, three dollars;

Trial of right of property.

9. For holding each inquest, a trial of right of property, to include all services in the matter except milage, three dollars;

Subpœna.

10. For serving a subpœna, for each witness summoned, thirty cents;

Commissions for receiving and paying over money after sale.

11. For commissions for receiving and paying over money on execution or other process, when land or personal property has been levied on and sold, on the first one thousand dollars, two per cent; on all sums above that amount, one per cent.; but in no case of sale of real estate shall his commission exceed one hundred dollars, and when the amount of such sale is credited on the debt and no money is transferred, then one-half of such commission;

Same, without sale.

12. For commissions for receiving and paying over money on execution without levy, or where lands or goods levied on are not sold, on the first one thousand dollars, one and one-half per cent; and one-half of one per cent on all over that sum, but not to exceed in any case fifty dollars. The fees herein allowed, for the levy of an execution, costs for advertising and percentage for making or collecting the money on execution, must be collected from the judgment debtor by virtue of such execution, in the same manner as the sum therein directed to be made;

Costs collected of the judgment debtor.

Sheriff's deed.

13. For drawing and executing a Sheriff's deed, including the acknowledgment, to be paid by the grantee before delivery, three dollars;

Certificate of sale.

14. For executing a certificate of sale exclusive of the filing and recording of the same, one dollar;

Arrest.

16. For making every arrest in a criminal proceeding, two dollars;

Trial jurors.

18. For summoning each trial juror, twenty-five cents;

Subpœna in criminal action.

21. For serving a subpœna in a criminal action or proceeding, for each witness summoned, twenty-five cents;

Mileage.

Recorder and auditor. Comp. laws, 564. 11 ses., 264. 13 ses., 138.

Recorder and auditor, general provisions.

County surveyor, fees of. Comp. laws, 795.

23. For traveling, to be computed in all cases from the court house, to serve any summons and complaint, or any other process by which action or proceeding is commenced, notice, rule, order, subpœna, venire, attachment on property, to levy an execution, to post notice of sale, to sell property under execution or other order of sale, or execute an order of arrest, or order for the delivery of personal property, writ of possession or restitution, to hold inquest or trial of right of property, for each mile actually and necessarily traveled, in going only, twenty cents; for traveling to execute any warrant of arrest, subpœna, venire or other process in criminal cases, or for taking a prisoner from prison before a court or magistrate, or for taking a prisoner from the place of arrest to prison or before a court or magistrate, for each mile actually and necessarily traveled, in going only, twenty cents; for each additional prisoner taken at the same time, fifteen cents per mile; but if any two or more papers be required to be served in the same action or proceeding, civil or criminal, or be in the possession of the Sheriff for service at the same time and in the same direction, one mileage only shall be charged; and in serving a subpœna, venire, process or paper, when two or more jurors, witnesses, parties or persons to be served reside or are found in the same direction, traveling fees must be charged only for the most distant; and only one mileage per day must be

charged for taking a prisoner from prison before a court or magistrate; and constructive mileage must in no case be charged or allowed. For all services arising in Justices' courts, the same fees as are allowed to Constables for like services.

Recorder and auditor.
Comp. laws, 564.
11 ses., 264.
13 ses., 138.

SEC. 2128. The County Recorder and Auditor, is allowed, and may receive for his services the following fees and compensation, to be paid him, by the party procuring his services as Recorder:

For filing, indorsing and indexing every instrument, paper or notice, when to be recorded, twenty-five cents; and for similar services, when the instrument, paper, or notice is not for record, but to be kept on file, fifty cents; for recording every instrument, paper or notice, for each folio, twenty cents; for copies of any record or paper, for each folio, twenty cents; for each certificate under seal, when required, fifty cents; for abstract of title, including searching the records therefor, for each conveyance or incumbrance certified, fifty cents; for entry of discharge of mortgage or other instrument on the margin of the record, witnessing and indexing the same, twenty-five cents; for recording every town plat or map, for first one hundred lots or less, three dollars and fifty cents, and for each additional lot, one cent; for taking acknowledgments, including seal, fifty cents; for filing, recording, and indexing marriage certificates, one dollar; for administering to the locator the oath, and certifying the same on the location notice of a mining claim, and for filing, recording and indexing each notice, two dollars, which must be divided equally between him and his mining deputy, who receives such notice; for recording each mark or brand, fifty cents; for administering an oath, including jurat, twenty-five cents; and certifying same when required, twenty-five cents additional; for all other services as Recorder not enumerated herein the same fees allowed the Clerk of the district court for like services.

Recorder and auditor, general provisions.

As Auditor:

He is allowed and may receive when not otherwise provided by law, fees as follows:

For administering an oath including jurat, if required, twenty-five cents.

County surveyor, fees of.
Comp. laws, 795.

SEC. 2132. The County Surveyor is allowed and may demand and receive for his services of the party for whom performed, the following fees:

For the first mile actually run with compass and chain, in bush or wood, five dollars, and for each succeeding mile three dollars; and for the same services in open, clear land, three dollars for the first mile and two dollars for each succeeding mile; for each mile run with compass alone, one-half the fee above; for each lot laid out and platted in any city or town, one dollar; for each copy of a plat of survey and certificate, two dollars; for calculating the quantity of every tract of land or sub-division thereof, except town lots, one dollar; for calculating the quantity of every tract of land not divided, one dollar; for traveling to the place of survey, for each mile in going only, forty cents; for ascertaining the location of every town lot in an old survey and measuring and marking the same, three dollars; for copies and certificates, per folio thirty cents; for erecting a monument at the corner of any survey when required, fifty cents; the expense of assistants is an additional charge to be agreed upon between the parties, or to be allowed by any court or Board of Commissioners ordering the survey. In the county of Cassia in addition to the fees allowed by law, the County Surveyor must receive an annual salary of two hundred dollars.

SEC. 2133. The Coroner must receive from the county for his services fees as follows:

For all services in summoning a jury of inquest, five dollars; for swearing the jury, fifty cents; for each mile traveled from his residence to the place of the dead body and returning home, twenty cents; for issuing subpœnas, twenty-five cents; for swearing each witness, twenty-five cents; for taking down the testimony of witnesses, for each folio, twenty-five cents; for issuing each warrant of arrest, fifty cents; for attending to the burial of the dead body, when required by law, ten dollars; for all services rendered when acting as Sheriff, the same fees allowed to Sheriffs for similar services.

SEC. 2135. A Justice of the Peace may charge, demand and receive the following fees for services performed in discharge of the duties imposed upon him by law:

For filing each paper, fifteen cents; for issuing any summons, writ or process by which action is commenced, fifty cents; for entering such cause on his docket, including all docket entries before judgment, fifty cents; for subpœna to witness, twenty-five cents; for administering an oath or affirmation, including jurat and certificate, fifteen cents; for issuing writ of attachment, or of arrest, or for delivery of property, one dollar; for entering any final judgment, for each folio, twenty-five cents; for taking and approving any bond or undertaking directed by law to be taken or approved by him, fifty cents; for taking justification to bond or undertaking when required by law, after exception to sureties, fifty cents; for swearing a jury, fifty cents; for taking deposition per folio, twenty cents; for entering satisfaction of judgment, twenty-five cents; for copy of judgment, order, docket, proceedings, or paper in his office, per folio, twenty cents; for issuing commission to take testimony, fifty cents; for making up and transmitting transcript and papers on appeal, two dollars; for making up and transmitting papers on change of venue, including copy, certificate and order, one dollar; for issuing search warrant, fifty cents; for issuing an execution, fifty cents; for celebrating marriage and returning certificate to the Recorder, five dollars; for all services and proceedings before a Justice of the Peace, in a criminal action or proceeding on examination, when an examination is not waived, or trial upon an issue of fact, six dollars; when an examination is waived or there is a plea of guilty, three dollars; for taking bail after commitment in criminal cases, fifty cents; for entering an action without process, fifty cents; for entering judgment by confession and only an affidavit as required in the District Court, in full for all services before execution, one dollar.

Constables, fees of. Comp. laws, 571-572.

SEC. 2136. A Constable is allowed and may collect and receive for any services required of him by law, fees as follows:

For serving summons in civil cases, for each defendant, fifty cents; for summoning a jury before a Justice of the Peace, one dollar and fifty cents; for taking a bond required to be taken, fifty cents; for summoning each witness, twenty-five cents; for serving an attachment against the property of the defendant, one dollar; for receiving and taking care of property on execution, attachment or order, his actual necessary disbursements and expenses to be allowed by the Justice who issued the process, upon satisfactory proof that such charges are correct, not to exceed two dollars per day; for collecting all sums of money on execution, three per centum to be charged against the defendant in the execution; for serving a warrant or order for the delivery of personal property or making an arrest in civil cases, one dollar; Constables must receive the same mileage for each mile necessarily traveled, in going only, as Sheriffs are authorized to receive in similar cases; for services and travel in criminal cases, the same fees as Sheriffs are authorized to receive for like services; for all other services, except attending court, the same fees as are allowed Sheriffs for similar services.

Officer to perform service when fees are paid.

SEC. 2137. The officers mentioned in this Title are not in any case, except for the Territory or county, to perform any official services unless upon the prepayment of the fees prescribed for such services except as in the succeeding section provided by law; and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

No charge on proceedings under habeas corpus.

SEC. 2138. No fee or compensation of any kind must be charged or received by any officer for duties performed or services rendered in proceedings upon habeas corpus.

Tables of fees.

SEC. 2139. Every officer whose fees are herein ascertained must publish and set up in his office fair tables of his fees, according to this Title, within one month after he enters upon the duties of his office, in some conspicuous place, for inspection of all persons who have business in his office, upon pain of forfeiting for each day, a sum not exceeding twenty dollars, which may be recovered by any person by action before any Justice of the Peace of the same county, with costs.

Execution of fees.

SEC. 2140. If any Clerk, Sheriff, Justice of the Peace, or Constable shall not have received any fees which may be due him for services rendered in any suit or proceeding, he may have execution therefor, in his own name against the party from whom they are due; to be issued from the court in which the action is pending.

Folio, how construed.

SEC. 2141. The term "folio", when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every three figures necessarily used as a word. Any portion of a folio, when in the whole draught or paper, should there not be a complete folio, and when there should be an excess over the last folio exceeding a quarter, shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

Mileage.

SEC. 2142. When any Sheriff, Constable, or Coroner, serves more than one process in the same case, not requiring more than one journey from his office, he shall receive mileage only for the most distance service.

No fees as witness, who.

SEC. 2143. No counselor or attorney at law in any case shall be allowed any fees for attendance as a witness in any such cause.

Receipt for fees.

SEC. 2144. Every officer upon receiving any fees for official duty or services, may be required by the person making the same to make out in writing and deliver to such person a particular account of such fees, specifying for what they respectively accrued and shall receipt for the same; and if he refuses or neglect to do so, when required, or shall receive illegal fees, he shall be liable to the party paying for three times the amount so paid.

No other compensation.

SEC. 2145. Officers whose fees and compensation are set forth in this Title, shall not be entitled to charge or receive any fees, compensation, or salary not herein enumerated and provided for.

Witness fees.

SEC. 2146. The Attorney-General or any district attorney is authorized to cause subpœnas to be issued and compel the attendance of witnesses on behalf of the Territory, without paying or tendering fees in advance to any officers or witnesses; and any witness failing or neglecting to attend, after being served with a subpœna may be proceeded against and shall be liable in the same manner as provided by law in other cases when fees have been tendered or paid.

Salaries of county officers, classification of counties.

SEC. 2147. (Sec. 1.) For the purpose of regulating the compensation of certain county, precinct and district officers within the several counties of Idaho Territory, the counties are classified according to their valuation, based upon the assessment roll for the year A. D. 1886, as follows, to wit:

First class.

First Class:

All counties having a valuation of three million two hundred and fifty thousand ($3,250,000) dollars and over, shall belong to and be known as counties of the First Class.

Second class.

Second Class:

All counties having a valuation of two million ($2,000,000) dollars, and under three million two hundred and fifty thousand ($3,250,000) dollars, shall belong to and be known as counties of the Second Class.

Third class.

Third Class:

All counties having a valuation of one million ($1,000,000) dollars and under two million ($2,000,000) dollars, shall belong to and be known as counties of the Third Class.

Fourth class.

Fourth Class:

All counties having a valuation of five hundred thousand ($500,000) dollars and under one million ($1,000,000) dollars, shall belong to and be known as counties of the Fourth Class.

Fifth class.

Fifth Class:

All counties having a valuation of less than five hundred thousand ($500,000) dollars, shall belong to and be known as counties of the Fifth Class.

New counties.

SEC. 2148. (Sec. 2.) All counties created or organized after the passage of this act shall immediately come under and be governed by its provisions so far as the same are applicable thereto, *Provided,* That all newly created counties shall for the purposes of fixing the compensation of county, precinct and district officers enter the class of counties having a valuation of less than five hundred thousand ($500,000) dollars.

Class, how determined.

SEC. 2149. (Sec. 3.) It shall be the duty of the County Commissioners of the several counties of this Territory now created or hereafter created at their regular meeting in January of each year, after the year A. D. 1887, to designate by an order entered upon their minutes, the class to which their said county belongs, which shall be ascertained by the assessment roll of such county for the year immediately preceding such meeting, and such county shall enter the list of such class so designated.

County officers.

SEC. 2150. (Sec. 4.) The officers of a county are:

1. A Sheriff.
2. A Recorder, who shall be ex-officio auditor and ex-officio clerk of the Board of County Commissioners.
3. An Assessor who shall be ex-officio tax collector.
4. A Probate Judge.
5. A District Attorney.
6. A County Treasurer, who shall be ex-officio Public Administrator.
7. A Superintendent of Schools.
8. A Surveyor.
9. A Coroner.
10. Three members of the Board of County Commissioners.

Compensation fixed by commissioners. No other compensation.

SEC. 2151. (Sec. 5.) It shall be the duty of the Board of County Commissioners of each county at their regular meeting in April, A. D. 1887, and thereafter at their regular meeting in January of each year to fix the compensation of the several county, precinct and district officers of their county hereafter named, which in no case shall be less than the lowest amount designated for such officer, and which in no case shall be in excess of the highest amount designated for such officer as hereinafter designated, and the compensation so fixed by said Board shall be the only compensation of such officer for all services required of such officer by virtue of his office, rendered or performed for his said county.

First-class sheriffs.

SEC. 2152. (Sec. 6.) In the counties of the first class:

The Sheriff shall receive a salary of not less than four thousand ($4,000) dollars per annum, and not to exceed six thousand ($6,000) dollars per annum; he shall be allowed in addition to such salary as fixed by said Board, the sum of not less than one (1) dollar, nor more than one (1) dollar and fifty (50) cents per day for each prisoner confined in the county jail, as remuneration in full for the board, clothing, lights and medical attendance of such prisoner; he shall be allowed a jailer, for whose services he shall be allowed the sum of not less than two (2) dollars and fifty (50) cents, nor more than three (3) dollars and twenty-five (25) cents per day for each day a prisoner or prisoners are confined in the county jail of his county.

Allowance for keeping prisoners.

Jailor.

Recorder and auditor.

The Recorder the sum of not less than nine hundred ($900.00) dollars per annum, and not to exceed twelve hundred ($1,200.00) dollars per annum as Recorder, ex-officio Auditor and ex-officio Clerk of the Board of County Commissioners.

The Assessor not less than twelve (12) per centum and not to exceed fifteen (15) per centum of all per capita and hospital taxes collected, and not less than three (3) per centum, and not to exceed six (6) per centum of all other taxes by him collected. Assessor.

The Probate Judge the sum of not less than eight hundred ($800.00) dollars per annum, and not to exceed fifteen hundred ($1,500.00) dollars per aunum. Probate judge.

The District Attorney the sum of not less than twenty-five hundred ($2,500.00) dollars per annum, and not to exceed five thousand ($5,000.00) dollars per annum. Dist. attorney.

The County Treasurer the sum of not less than seven hundred ($700.00) dollars per annum, and not to exceed one thousand ($1,000.00) dollars per annum. County treasurer.

The Superintendent of Schools, the sum of not less than five hundred ($500.00) dollars per annum, and not to exceed nine hundred ($900.00) dollars per annum. School superintendent.

The Clerk of the District Court, the sum of not less eight hundred ($800.00) dollars per annum, and not to exceed twelve hundred ($1,200.00) dollars per annum. Clerk district court.

Each Road Supervisor within the county the sum of not less than two (2) dollars and fifty (50) cents per day, and not to exceed four (4) dollars per day for each day that he is necessarily engaged in the performance of the duties required of him by virtue of his office. Road supervisor.

SEC. 2153. (Sec. 7.) In the counties of the second class: The Sheriff shall receive a salary of not less than two thousand five hundred ($2,500.00) dollars per annum, and not to exceed three thousand five hundred ($3,500.00) dollars per annum; he shall also be allowed in addition to such salary as fixed by said Board the sum of not less than one (1) dollar, nor more than one (1) dollar and fifty (50) cents per day for each prisoner confined in the county jail, as remuneration in full for the board, clothing, lights and medical attendance of such prisoner; he shall also be allowed a jailer for whose services he shall be allowed the sum of not less than two (2) dollars and fifty (50) cents, nor more than three (3) dollars and twenty-five (25) cents per day, for each day a prisoner or prisoners are confined in the county jail of his county. Second-class, sheriffs. Allowance for keeping prisoners. Jailor.

The Recorder the sum of not less than eight hundred ($800.00) dollars per annum, and not to exceed one thousand ($1,000.00) dollars per annum as Recorder, ex-officio Auditor and ex-officio Clerk of the Board of County Commissioners. Recorder and auditor.

The Assessor not less than twelve (12) per centum and not to exceed fifteen (15) per centum of all per captia taxes collected, and not less than four (4) per centum and not to exceed six (6) per centum of all other taxes by him collected. Assessor.

The Probate Judge the sum of not less than six hundred ($600.00) dollars per annum, and not to exceed nine hundred ($900.00) dollars per annum. Probate judge.

The District Attorney the sum of not less than two thousand ($2,000.00) dollars per annum, and not to exceed twenty-five hundred ($2,500.00) dollars per annum. Dist. attorney.

The County Treasurer the sum of not less than six hundred ($600.00) dollars per annum, and not to exceed eight hundred ($800.00) dollars per annum. County treasurer

The Superintendent of Schools the sum of not less than School superintendent.

three hundred ($300.00) dollars per annum, and not to exceed six hundred ($600.00) dollars per annum.

Clerk of dist. court.

The Clerk of the District Court the sum of not less than six hundred ($600.00) dollars per annum, and not to exceed eight hundred ($800.00) dollars per annum.

Road supervisor

Each Road Supervisor within the county the sum of not less than two (2) dollars and fifty (50) cents per day, and not to exceed the sum of four (4) dollars per day for each day that he is necessarily engaged in the performance of the duties required of him by virtue of his office.

Third-class sheriff.

SEC. 2154. (Sec. 8.) In the counties of the third class:

Allowance for keeping prisoners.

Jailer.

The Sheriff shall receive a salary of not less than seventeen hundred ($1,700.00) dollars per annum, and not to exceed twenty-five hundred ($2,500.00) dollars per annum; he shall also be allowed in addition to such sallary as fixed by said Board the sum of not less than one (1) dollar nor more than one (1) dollar and fifty cents per day for each prisoner confined in the county jail as remuneration in full for the board, clothing, lights and medical attendance of such prisoner; he shall be allowed a jailer for whose services he shall be allowed the sum of not less than two (2) dollars and fifty (50) cents, nor more than three (3) dollars and twenty-five (25) cents per day for each day a prisoner or prisoners are confined in the county jail of his county.

Recorder and auditor.

The Recorder the sum of not less than seven hundred ($700) dollars per annum, and not to exceed nine hundred ($900) dollars per annum as Recorder, ex-officio Auditor and ex-officio Clerk of the Board of County Commissioners.

Assessor.

The Assessor not less than twelve (12) per centum and not to exceed fifteen (15) per centum of all per capita taxes collected, and not less than four (4) per centum and not to exceed six (6) per centum of all other taxes by him collected.

Probate judge.

The Probate Judge, the sum of not less than five hundred ($500) dollars per annum, and not to exceed seven hundred ($700) dollars per annum.

Dist. attorney.

The District Attorney, the sum of not less than one thousand ($1,000) dollars per annum, and not to exceed fifteen hundred ($1,500) dollars per annum.

County treasurer

The County Treasurer the sum of not less than five hundred ($500) dollars per annum, and not to exceed seven hundred ($700) dollars per annum.

School superintendent

The Superintendent of Schools, the sum of not less than three hundred ($300) dollars per annum, and not to exceed five hundred ($500) dollars per annum.

Clerk dist court.

The Clerk of the District Court, the sum of not less than three hundred ($300) dollars per annum, and not to exceed five hundred ($500) dollars per annum.

Road supervisor.

Each Road Supervisor within the county the sum of not less than two (2) dollars and (50) cents per day, and not to exceed the sum of four (4) dollars per day, for each day that he is necessarily engaged in the performance of the duties required of him by virtue of his office.

Fourth-class

SEC. 2155. (Sec. 9.) In the counties of the fourth class:

The Sheriff shall receive a salary of not less than twelve hundred ($1,200) dollars and not to exceed two thousand ($2,000) dollars per annum; he shall also be allowed in addition to such salary as fixed by said Board the sum of not less than

Sheriff's allowance for keeping prisoners.

Jailor.

one (1) dollar nor more than one (1) dollar and fifty (50) cents per day for each prisoner confined in the county jail, as remuneration in full for the board, clothing, lights and medical attendance of such prisoner; he shall be allowed a jailer for whose services he shall be allowed the sum of not less than two (2) dollars and fifty (50) cents nor more than three (3) dollars and twenty-five (25) cents per day for each day a prisoner or prisoners are confined in the county jail of his county.

Recorder and auditor.

The Recorder the sum of not less than five hundred ($500) dollars per annum, and not to exceed eight hundred ($800) dollars per annum as Recorder, ex-officio Auditor, and ex-officio Clerk of the Board of County Commissioners.

Assessor.

The Assessor not less than twelve (12) per centum, and not to exceed fifteen (15) per centum of all per capita taxes collected, and not less than (5) per centum, and not to exceed seven (7) per centum of all other taxes by him collected.

Probate judge.

The Probate Judge the sum of not less than three hundred ($300) dollars per annum, and not to exceed five hundred ($500) dollars per annum.

Dist. attorney.

The District Attorney the sum of not less than eight hundred ($800) dollars per annum, and not to exceed twelve hundred ($1,200) dollars per annum.

County treasurer.

The County Treasurer the sum of not less than three hundred ($300) dollars per annum, and not to exceed five hundred ($500) dollars per annum.

School superintendent.

The Superintendent of Schools the sum of not less than two hundred ($200) dollars per annum, and not to exceed three hundred ($300) dollars per annum.

Clerk dist. court.

The Clerk of the District Court the sum of not less than three hundred ($300) dollars per annum, and not to exceed five hundred ($500) dollars per annum.

Road supervisor.

Each Road Supervisor within the county the sum of not less than two (2) dollars and fifty (50) cents per day, and not to exceed the sum of four (4) dollars per day for each day that he is necessarily engaged in the performance of the duties required of him by virtue of his office.

Sheriffs, fifth-class allowance for keeping prisoners.

Jailer.

SEC. 2156. In the counties of the fifth class:

The Sheriff shall receive a salary of not less than twelve hundred ($1,200) dollars per annum, and not to exceed fifteen hundred ($1,500) dollars per annum; he shall also be allowed in addition to such salary as fixed by said Board the sum of not less than one (1) dollar, nor more than one (1) dollar and fifty (50) cents per day for each prisoner confined in the county jail as remuneration in full for the board, clothing, lights and medical attendance of such prisoner: he shall be allowed a jailer for whose services he shall be allowed the sum of not less than two (2) dollars and fifty (50) cents, nor more than three (3) dollars and twenty-five (25) cents per day for each day a prisoner or prisoners are confined in the county jail of his county.

Recorder and auditor.

The Recorder the sum of not less than four hundred ($400) dollars per annum, and not to exceed six hundred ($600) dollars per annum, as Recorder, ex-officio Auditor and ex-officio Clerk of the Board of County Commissioners.

Assessor.

The Assessor, not less than twelve (12) per centum, and not to exceed fifteen (15) per centum of all per capita taxes collected, and not less than five (5) per centum, and not to exceed seven (7) per centum of all other taxes by him collected.

Probate judge.

The Probate Judge, the sum of not less than two hundred ($200.00) dollars per annum, and not to exceed four hundred ($400.00) dollars per annum.

Dist. attorney.

The District Attorney, the sum of not less than six hundred ($600.00) dollars per annum and not to exceed nine hundred ($900.00) dollars per annum.

County treasurer.

The County Treasurer, the sum of not less than three hundred ($300.00) dollars per annum, and not to exceed four hundred ($400.00) dollars per annum.

School superintendent.

The Superintendent of Schools, the sum of not less than one hundred ($100.00) dollars per annum, and not to exceed two hundred ($200.00) dollars per annum.

Clerk dist court.

The Clerk of the District Court, the sum of not less than two hundred and fifty ($250.00) dollars per annum, and not to exceed four hundred ($400.00) dollars per annum.

Road supervisor.

Each Road Supervisor within the county, the sum of not less than two (2) dollars and fifty (50) cents per day, and not to exceed the sum of four (4) dollars per day for each day that he is necessarily engaged in the performance of the duties required of him by virtue of his office.

Other salary and fees.

SEC. 2157. (Sec. 11.) None of the officers, mentioned in sections six (6), seven (7), eight (8), nine (9), and ten (10) of this act, shall receive any salary or fees from their county, for services rendered, except:

Treasurer.

First. The Treasurer shall receive the fees now allowed by law as public administrator;

Sheriff to collect licenses.

Second. The Sheriff shall receive six (6) per centum for collecting county and Territorial licenses, and he shall collect such licenses;

School superintendent, traveling expenses.

Third. The Superintendent of Schools shall be allowed his actual and necessary traveling expenses in visiting the schools of his county once each year;

Dist. attorney, from territory.

Mileage

Deputy.

Fourth. The District Attorney shall be allowed three hundred ($300.00) dollars per annum, to be paid by the territory, also twenty-five (25) cents per mile one way for traveling to attend felony examinations before committing magistrates, and in counties of the first class, if the commissioners deem proper, they may permit him to appoint a deputy or deputies, at a cost to the county of not to exceed one thousand ($1,000.00) dollars per annum;

Territorial moneys.

Fifth. The County Auditors and Treasurers shall receive three (3) per centum on all territorial money collected in their counties;

Dist. attorneys, duties of.

Sixth. It shall be the duty of the District Attorney to attend all felony examinations, and all trials, and investigations before the grand jury, in the district court, and to perform all other duties now required of him by law;

Duties of sheriff.

Penalty.

Seventh. It shall be the duty of the Sheriff to serve all process delivered to him or at his office for service, and if he refuse to do so, then the cost of serving all process in favor of the people of the United States in the Territory of Idaho, must be deducted from his salary.

Salaries paid quarterly.

SEC. 2158. (Sec. 12.) The compensation herein mentioned and provided for the officers named in this act, shall be paid quarterly out of the county treasury upon the Auditor's warrant, after the same has been allowed by the Board of County Commissioners, and such warrant shall be drawn upon the "Current Expense" or "County General" fund of the county.

SEC. 2159. (Sec. 13.) The Surveyor, Coroner and members of the Board of County Commissioners, each Justice of the Peace and Constable within the county, shall receive the salary and fees now allowed by law, and nothing in this act shall in any manner affect the compensation of the officers mentioned in this section.

Other officers, compensation of.

SEC. 2159*a*. (Sec. 14.) All acts and parts of acts in conflict with the provisions of this act are hereby repealed. [Act Feb. 7, 1887. In effect April 11, 1887.]

Repealing clause.

CHAPTER V.

OTHER COUNTY CHARGES.

SECTION
2160. County charges to be audited.

SECTION
2161. Examination of county charges.

SECTION 2160. Accounts for county charges of every description must be presented to the Board of County Commissioners to be audited as provided by law.

County charges to be audited.

SEC. 2161. The following are county charges:

Examination of county charges.

1. Charges incurred against the county by virtue of any provision of this Title;

3. The compensation allowed by law to constables for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for service of subpœna issued by or at the request of the District Attorneys, and for other services in relation to criminal proceedings for which no specific compensation is prescribed by law;

4. The expenses necessarily incurred in the support of persons charged with or convicted of crimes and committed therefor to the county jail;

5. The sums required by law to be paid to Grand Jurors and indigent witnesses in criminal cases;

6. The accounts of the Coroner of the county for such services as are not provided to be paid otherwise;

7. All charges and accounts for services rendered by any Justice of the Peace for services in the examination of persons charged with crime not otherwise provided for by law;

8. The necessary expenses incurred in the support of county hospitals, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

9. The contingent expenses necessarily incurred for the use and benefit of the county;

10. Every other sum directed by law to be raised for any county purpose under the direction of the Board of County Commissioners, or declared to be a county charge.

CHAPTER VI.

THE COUNTY POOR.

SECTION
2170. Contract for maintenance of poor.
2171. County physician. Work.
2172. Keeper of, to keep accounts.
2173. Application for county aid.
2174. Duty of officer to whom application is made.
2175. Duty of County Commissioners
SECTION
2176. No claim allowed without certificate.
2177. Application by third party.
2178. When discharged.
2179. Treatment of inmates
2180. Hospital tax; collection and disbursement.
2181. Hospital tax, receipts.

Contract for maintenance of poor.
Comp. laws, 853.

SECTION 2170. The Board of County Commissioners, in their respective counties, may contract for the care, protection and maintenance of the indigent sick, or otherwise dependent poor of the county. They must require the contractor to enter into a bond to the county with two or more approved sureties, in such sum as the Board may fix, conditioned for the faithful performance of his duties and obligations as such contractor, and require him to report to the Board quarterly all persons committed to his charge, showing the cause and nature of their confinement and the expense attendant upon their care and maintenance.

County physician.
12 ses., 80.

Work.

SEC. 2171. The Board must employ a physician to attend, when necessary, upon the inmates of the poor-house or county hospital. They must provide for the employment at some kind of manual labor of such of the inmates as are capable and able to work, and the attending physicians must certify to the keeper or lessee of the poor-farm the names of such of the inmates as are incapable of manual labor and when any such inmate becomes capable the physician must certify the fact.

Keeper to keep accts. and to report.
12 ses., 80.

SEC. 2172. The keeper of the county poor-farm, poor-house or hospital must keep a correct account of all receipts and expenditures in connection therewith and make full and complete reports thereof quarterly to the Board of County Commissioners.

Aplication for county aid
13 ses., 127.

SEC. 2173. Any sick or indigent person desiring aid from any county of this Territory, must, before such aid can be given, make a written application to the Probate Judge, the Clerk of the Board of County Commissioners or to any Justice of the Peace in the precinct where such applicant may reside, setting forth and describing all the property, real, personal and mixed, wherever it is situated, owned in whole or in part by such applicant, or in which he or she has any legal or equitable interest; if such applicant have no available property, real or personal, then he must declare his indigency and destitution, which must be signed by the party or parties making such application and sworn to before some officer authorized by the laws of this Territory to administer oaths and filed in the office of the Clerk of the Board of County Commissioners.

Duty of officer to whom application is made.
13 ses., 127.

SEC. 2174. It is the duty of the Probate Judge, Clerk of the Board of County Commissioners, or the Justice of the Peace to whom such application is made, to immediately investigate the grounds of such application and for such purpose he may require the applicant and such other persons as may be deemed necessary, to testify under oath, and if such officer is fully satisfied that said applicant is really sick, indigent and in destitute circumstances, and would suffer unless aided by the county, he must file a certificate to that effect with the Clerk of the Board of County Commissioners of such county, and in case said Board of County Commissioners is not in regular session at the time of the date of such certificate, the officer to whom said application is made may, in his discretion, authorize the applicant to be placed in the poor-house or hospital of the county, or, if the county is not provided with a poor-house or hospital, he may authorize the expenditure of any sums not exceeding the sum of forty dollars in the aggregate, to provide for the immediate necessities of such applicant, and must present his bill for such expenditure to the Board of County Commissioners duly verified under oath and the Board must audit and pay such bill out of the proper fund of such county at their next regular session.

Duty of county commissioners. 13 ses., 128.

SEC. 2175. That the County Commissioners of such county must, after the filing of the certificate as aforesaid, if in their judgment the applicant is sick and indigent, and would suffer if not aided by the county, make such provisions for his relief as may be necessary under the circumstances.

No claim allowed without certificate. 13 ses., 128.

SEC. 2176. That the County Commissioners must not allow any claim or demand against the county for services rendered to any sick or indigent person who has not previously obtained from the Probate Judge, Clerk of the Board of County Commissioners or the Justice of the Peace, as aforesaid, the certificate heretofore mentioned, and must not allow any claim or demands whatsoever against the county for any expense incurred by, or in behalf of, any sick or indigent person before the filing of the application and certificate aforesaid.

Application by third party. 13 ses., 128.

SEC. 2177. That if any sick and indigent person or persons, desiring assistance from any county in this Territory, is unable from illness to make the application in writing required in this chapter, such application may be made for him or on his behalf, by any other person under oath.

When discharged. 12 ses., 81.

SEC. 2178. Every person admitted to the county poorhouse or hospital, must be discharged therefrom by the keeper:

First, at his own request, if capable of taking care of himself, or if his friends or relatives are willing to take care of him. Secondly, whenever, in the judgment of the keeper and attending physician, the person is capable of supporting himself; but in such case the County Commissioners have the power to revise the act of the keeper and attending physician, and can return a person, who, in their judgment, has been improperly discharged, or may discharge any one that in their judgment, should no longer be an inmate of the poor-house or hospital.

Treatment of inmates. 12 ses., 81.

SEC. 2179. The treatment of all inmates of the poorhouse and hospital must be kind and humane; they must be supplied with comfortable clothing, sufficient bedding and plain, substantial food, and must not be required to perform labor to an extent that is detrimental to health; but the keeper has power to compel those who are able to perform labor, to perform the same by reasonable and humane coercion.

Hospital tax, how collected and disbursed. Comp. laws, 853.

SEC. 2180. The per capita and ad valorem tax, when levied by the Board of County Commissioners for the care and maintenance of the poor of the county, must be collected by the Tax Collector in the same manner and at the same time as other county taxes, and when collected must be paid into the county treasury and constitute the county hospital fund, and must be used for the care and maintenance of the indigent sick or otherwise dependent poor of the county, and for no other purpose, and can only be drawn from the county treasury upon presentation of the warrant of the Commissioners drawn upon the hospital fund.

Hospital tax receipts. Comp. laws, 853.

SEC. 2181. The County Treasurer must provide blank receipts for the special per capita hospital tax when levied, which must be signed by the Treasurer and countersigned and registered by the Auditor, and delivered and charged to the Tax Collector and his receipt taken therefor.

TITLE XII.

DISPOSAL OF TOWN SITES ENTERED UNDER THE LAWS OF THE UNITED STATES.

SECTION
2200. Corporate authorities or Probate Judge to enter Towns sites at United States Land Office
2201. Conveyance how made and to whom covenant.
2202. Notice of entry, how given, by whom.
2203. Statement of party claiming interest what to contain.
2204. Adverse claims, how determined.
2205. Trial, what evidence may be given.
2206. Proceedings in District Court to determine controversy.
SECTION
2207. To render account, compensation, how paid, by whom.
2208. Fees must be tendered, payment of.
2209. Conveyance to claimants, request of.
2210. Rights of officer or trustee entering lands, interest of, how settled.
2211. Determining adverse rights, who deemed to possess title.
2212. Costs of action, how regulated.
2213. Contracts.
2214. Duties of successors in trust, powers of.

SECTION 2200. It is the duty of the corporate authorities of any city or incorporated town; or of the Probate Judge of any county in which is situate any incorporated town, to enter at the proper land-office of the United States such quantity of land as the inhabitants of such city or town may be entitled to claim, in the aggregate, according to the population, in the manner required by the laws of the United States and the regulations prescribed by the Secretary of the Interior of the United States, and make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect this Title and Chapter eight of Title thirty-two of the Revised Statutes of the United States, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by the laws of Congress.

Corporate authorities or probate judge to enter town sites at United States land office.
Comp. laws, 698.

SEC. 2201. Any such corporate authorities, or judge, holding the title to any such lands in trust, as declared in said acts of Congress, must by a good and sufficient conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person entitled thereto, according to his rights or interest in the same as they exist, in law or equity, at the time of the entry of such lands, and when any parcel or share of such lands is occupied or possessed by one or more persons, claiming the same by grant, lease or sale, the respective rights and interest of such persons, in relation to each other in the same, are not changed or impaired by any such conveyance. Every conveyance, by such corporate authorities or judge, pursuant to the provisions of this Title, must be so executed and acknowledged as to admit the same to be recorded, and if made previous to the issuing of the patent for such lands, it must contain a covenant that the grantor will, after the issuing of such patent, execute, acknowledge and deliver to the grantee, his heirs or assigns, such further conveyance, as may be or become necessary to fully vest and perfect the title to the lands therein described in the grantee, his heirs or assigns.

Conveyance, how made and to whom covenant.

SEC. 2202. Within thirty days after the entry of such lands the corporate authorities or Judge, entering the same, must give public notice of such entry by posting the notice thereof in at least three public places in said town, and by publishing such notice in a newspaper printed and published in the county in which such town is situated, or, in

Notice of entry, how given, by whom.

case there is no such newspaper, then in some newspaper printed and published at the seat of government; such notice must be so published once in each week for at least three successive weeks, and must contain the name of the town site, and an accurate description of the lands so entered as the same are described in the certificate of entry or duplicate receipt for the purchase money thereof, issued at the time of entry.

Statement of party claiming interest, what to contain.

SEC. 2203. Every person, association, or company claiming to be entitled to such lands, or any block, lot, share or parcel thereof, must within sixty days after the first publication of such notice, in person or by duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular parcel or parts in which he claims to have an interest, and the specified right, interest, or estate therein, which he claims to be entitled to receive, also a brief statement of the facts upon which such right, interest, or estate depends, for its validity, and deliver the same to such corporate authorities or Judge, and all persons failing to sign and deliver such statement, within the time specified in this section, are, as against any claimant, forever barred the right of claiming or recovering such lands, or any interest therein.

Adverse claims, how determined.

SEC. 2204. In case there are adverse claimants to such lands, or to any part, parcel or share thereof, and the controversy is not settled by agreement in writing between the parties thereto, such controversy may be determined by voluntary submission thereof by the parties to reference or arbitration and by the written award of the arbitrators; and in case any such controversy is not so settled or determined within three months from the time of the entry of the land, either of the claimants may bring a civil action against the adverse claimant in the district court for the county in which the lands are situated.

Trial, what evidence may be given.

SEC. 2205. Upon the trial in such action either party may give in evidence the statement mentioned in this Title, deposited by the other, or by the person under whom he claims, with the corporate authorities or Judge holding the title to the lands in controversy therein, and the person who made the first claim to, and settlement upon such lands, either in person or by agent, servant or tenant, or those claiming under him, must in such actions be deemed to have the right to such lands, provided there has been no abandonment thereof since such settlement.

Proceedings in district court to determine controversy.

SEC. 2206. In case any controversy between adverse claimants to such lands is not settled or determined by agreement or arbitration within the time allowed therefor as hereinbefore specified, and no action to determine the same is commenced by either claimant within one month thereafter, the corporate authorities or Judge holding the title to any such lands, must bring an action in the District Court for the county in which the lands in controversy are situated, against the adverse claimants thereto, to settle and determine such controversy. The complaint in such case must be in the nature of a bill of interpleader, and set forth a description of the lands thus claimed by adverse claimants, and the character and extent of the right, interest or estate therein claimed by each, as the same appears by the statements deposited with such authorities or Judge (as the case may be), and pray that the several adverse claimants may be required to appear in such court and prosecute their claims or be forever barred. Any party to such action who fails to appear and answer such complaint, and thus prosecute his claim to the land described therein, pursuant to the summons in such case, and the practice of the District Court, is forever barred of the right to assert any claim or title to such lands adverse to the other claimants in any court whatsoever. If the adverse claimants of the land described in the complaint appear, they must respectively answer such complaint, and either disclaim any right, title, interest or estate in the land therein described, or set forth the nature, character and extent of the title and interest which they respectively claim therein.

To render account, compensation, how paid, by whom.

SEC. 2207. As soon as may be after the expiration of sixty days from the first publication of the notice, the corporate authorities or Judge holding the title to the lands described in such notice, must make a true statement in writing containing a true account of moneys expended in the acquisition of the title, and the administration or execution of the trust to that time, including all moneys paid for the purchase of such lands, all necessary traveling expenses, all moneys paid for posting and publishing such notices, and for proof thereof, and for all other necessary and proper expenses incident to such trust, and also a true account for time and service employed in the business of such trust to that time. The whole amount of such account for moneys and reasonable charges for compensation is a charge upon the lands so held in trust, in favor of the trustee, and must be paid by the several claimants entitled to such lands, in proportion to the several quantities of shares thereof to which they are respectively entitled.

Fees must be tendered, payment of.

SEC. 2208. Before the corporate authorities or Judge holding any such lands in trust as aforesaid can be required to execute, acknowledge or deliver any conveyance thereof, or of any lot, block, parcel or share thereof, as hereinbefore mentioned, to any person claiming to be entitled to such conveyance, and such person must pay or tender the sum of money chargeable upon the part thereof to be conveyed according to the statement or account mentioned in the last section, together with interest on each of the money items of such account at the rate of twenty-four per cent per annum from the time when the same accrued, and also such further sums as are a reasonable compensation for preparing, executing and acknowledging such conveyance, and and the fees of the officers taking the acknowledgment thereof.

Conveyance to claimants, request of.

SEC. 2209. After the expiration of sixty days from the time of the first publication of the notice, the corporate authorities or Judge holding the title to the lands described therein, must, upon a reasonable demand or request, and upon the payment or tender of the moneys mentioned in the last preceding section, execute, acknowledge and deliver to each and every claimant, association or company of claimants of such lands, or of any lot, block, parcel or share thereof, a conveyance thereof, according to the statement made and deposited as aforesaid; *Provided,* That no such conveyance must be executed, acknowledged or delivered for any part, lot, block or share of such lands to which there are adverse claimants until the controversy thereon is settled or determined in the manner hereinbefore prescribed, and whenever any such controversy is so settled or determined, the said corporate authorities or Judge, must, upon the like demand or request, and the like payment or tender, convey the land, or interest, or share therein, the right to which has been thus ascertained to the person thereby determined to be entitled to the same.

Rights of officer, or trustee entering lands.

SEC. 2210. In case any judge or other officer who enters any such lands under the provisions of the acts of Congress and thus becomes the sole trustee thereof, is possessed of, or entitled to any part, lot, block or share thereof, according to and by virtue of the provisions of this Title, and the same is not claimed adversely to him by any person, he is seized and possessed of the title thereto and estate therein, to his own use in fees simple, absolute, free, and discharged of such trust, and no conveyance other than the patent of the lands including the same, is necessary to perfect his absolute title thereto. In case any such land or share therein so claimed by said Judge or other officer, is claimed by any other person adversely to him, the conflicting claims must be adjusted or determined by settlement, arbitration or action as hereinbefore prescribed.

Determining adverse rights.

SEC. 2211. For the purpose of determining the rights of adverse claimants to any land so entered, the corporate authorities or Judge hereinbefore mentioned is deemed to possess and hold the title to such lands in trust from the time of the entry thereof.

Costs.

SEC. 2212. The costs in the actions mentioned in this Title are recoverable as in other civil actions.

Contracts.

SEC. 2213. Every person in whom the title to any lands is vested under and by the provisions of this Title, may be compelled to specifically perform any prior valid agreement for a conveyance.

Duties of successors in trust, powers of.

SEC. 2214. The successor in office of any Judge or other officer entering lands under said acts of Congress, must, when the trust has not been fully executed, succeed to said trust and has authority to execute the same as fully as his predecessor might have done while in office.

TITLE XIII.

TOWNS AND VILLAGES.

SECTION
2224. Incorporation of towns and villages.
2225. Trustees, election of.
2226. Terms of office of; qualifications.
2227. Oath, etc.
2228. Quorum.
2229. Rules.
2230. Corporate powers, enumeration of.
2231. Fines, disposition of.
2232. Officers.
2232*a*. Repealing clause.
2233. Debts and expenses.
2234. Borrow money.
2235. Funding indebtedness.
2236. Sinking fund.

SECTION
2237. Power to make improvements.
2238. Taxes for general purposes.
2239. Assessment.
2240. Notice; collecting of taxes.
2241. Taxes delinquent.
2242. Cemetery.
2243. By laws and Ordinances.
2244. Vacancies.
2245. Election Board.
2246 Notice of Elections.
2247. Vacancies in Board.
2248. Qualified electors.
2249 Polls kept open.
2250. No corporation dissolved.

Incorporation of towns and villages.
13 ses., 87.

SECTION 2224. When a majority of the taxable male inhabitants of any town or village, within this Territory, present a petition to the Board of County Commissioners of the county in which said town or village is situated, setting forth the metes and bounds of their town or village together with the adjacent bounds, in all not exceeding six miles square, which they desire to include therein, and praying that they may be incorporated, and police established for their local government, and the county commissioners are satisfied that a majority of the taxable male inhabitants of such town or village have signed such petition and that the prayer of the petitioners is reasonable, the Board of County Commissioners may declare such town or village incorporated, designating in such order the metes and bounds thereof; and thenceforth the inhabitants within such bounds are a body politic and corporate, by the name and style of the inhabitants of the town of, or village of (naming it), and by that name they and their successors shall be known in law, have perpetual succession (unless such corporation be dissolved), sue and be sued, implead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions, pleas and matters whatsoever; may grant, purchase, hold and receive property, real and personal, and may lease, sell, and dispose of the same for the benefit of the town, and may have a common seal, and break and alter the same at pleasure.

Name

Powers.

Trustees.
13 ses., 88.

SEC. 2225. The corporate powers and duties of every town or village so incorporated are vested in a Board of Trustees to consist of five members. The first Board of Trustees must be appointed by the Board of County Commissioners at the time of declaring such town or village incorporate, and continue in office until their successors are elected and qualified, and such successors must be chosen by the qualified electors residing in such town or village, on the first Monday of April in every year, in the manner hereinafter provided.

Qualifications of trustees.
13 ses., 88.

SEC. 2226. Any person may be a Trustee who has attained the age of twenty-one years, and is a male citizen of the United States, and is an inhabitant of the town or village at the time of his election and has resided therein one year next preceding; and every Trustee so elected holds his office for the term of one year and until a successor is elected and qualified.

Oath, etc. 13 ses., 88.

SEC. 2227. Every Trustee before entering upon the duties of his office must take an oath to support the Constitution of the United States and the Organic Act of the Territory of Idaho, and faithfully and impartially to discharge the duties of his office; and every Board of Trustees must assemble within ten days after their appointment or election and choose a Chairman from their number. The Board of Trustees must, by ordinance, fix the time and place of holding their stated meetings and may be convened at any time by the Chairman.

Quorum. 13 ses., 88.

SEC. 2228. At all meetings of the Board a majority of the Trustees constitute a quorum to do business; a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as the Board of Trustees by ordinance have previously prescribed.

Rules. 13 ses., 88.

SEC. 2229. The Board of Trustees may determine rules for their own proceedings, punish any member or other person for disorderly behavior in their presence, and with the concurrence of four of the Trustees, expel or suspend any member, but not a second time for the same cause. They must keep a journal of their proceedings, and at the desire of any member cause the yeas and nays to be taken and entered on the journal on any question or ordinance, and their proceedings must be public.

Corporate powers.

SEC. 2230. Said Board of Trustees have power:

Ordinances.

1. To pass by-laws and ordinances;

Nuisances

2. To prevent and remove nuisances:

Bawdy-houses.

3. To prevent, restrain and suppress bawdy-houses, gambling houses, opium dens, and other disorderly houses within the limits of such town or village;

Gambling.

4. To regulate and prohibit gambling;

Licensing. 13 ses., 89.

5. To provide for licensing and regulating dram shops, tippling houses, saloons, gambling houses, theatrical and other amusements, traveling shows, circuses, and other exhibitions and shows within said town or village;

Firearms.

6. To prevent the firing of fire-arms;

Fast driving.

7. To prevent furious and unnecessary fast driving or riding of any horse or other animal within such town or village, or such part thereof as they may think proper;

Night-watches.

8. To establish night watches;

Hospitals.

9. To erect and maintain poor-houses and hospitals;

Pest houses.

10. To provide pest houses;

Diseases.

11. To prevent the introduction and spread of contagious diseases;

Fires.

12. To prevent and extinguish fires, and for that purpose have power to purchase fire engines and to erect engine houses, to purchase hose carts, hose, hooks, ladders, trucks, buckets, ropes and all other apparatus, to maintain a fire department, to provide cisterns, hydrants, water works or to purchase water for fire purposes from others maintaining water works in such town or village, in such manner as the trustees by ordinance determine:

Insurance companies.

13. To levy and collect from insurance companies doing business in such town or village, a license tax for the support of the fire department therein not exceeding five per

cent, of the gross sums to such insurance companies in such town or village, annually, as premiums;

14. To provide fire limits within such town or village; Fire limits.

15. To establish and regulate markets; Markets.

16. To keep in repair and unobstructed from rubbish, filth, or other deleterious substance, all highways, streets, and alleys within such town or village; Streets and alleys.

17. To erect, repair, and regulate wharves and the rates of wharfage; Wharves.

18. To regulate the landing of steamboats, rafts and other water crafts; Steamboats,

19. To provide for the inspection of lumber, building materials and provisions to be used or offered for sale in such town or village or to be exported therefrom; Inspection.

20. To remove all obstructions from the sidewalks, curbstones, gutters, cross-walks, alleys, and open ditches and streams of water running through such town or village, at the expense of the owners or occupants of the ground fronting or abutting thereon, or at the expense of the person placing the same there; Sidewalks.

21. To require and regulate the planting of shade trees in the streets; Shade trees.

22. To regulate the building of stairways, railways, doorways, awning posts, and all other structures projecting upon or over and adjoining, and all other excavations through and under the sidewalks of such town or village; Awning posts.

23. To have streets and alleys opened, graded and repaired, and the footways and sidewalks paved or planked at the expense of the owners or occupants of the adjacent lots, and if any such owner or occupant fails to open, repair or pave or plank the same, as required by ordinance, such Board of Trustees may cause the same to be done, and may recover the full expense thereof, and the costs of the proceedings, to obtain such recovery from such owner or occupant by action in the name of the corporation before any court of competent jurisdiction, and if any tenant be required to open, grade, repair, or plank in front of the property occupied by him, the expense thereof is a good set off against so much rent due or to become due the owner, but no tenant can be required to expend more than the rent due or to become due for the term for which he occupies the property, and such charges are a lien upon the property and may be enforced and collected as other liens; Streets and alleys.

24. To regulate or restrain the running at large of cattle, horses, hogs, mules, sheep, goats, dogs or other animals, and to cause such as may be running at large to be impounded and sold to discharge the cost and penalties provided for the violation of such prohibitions and the expense of impounding and keeping the same, and of such sale; Cattle.

25. To provide for taxing the owners and harborers of dogs, and to destroy dogs found at large contrary to any ordinance regulating the same; Dogs.

26. To provide for the erection of all needful pens, pounds and buildings for the use of the town or village, within or without the limits of the same, and to appoint and compensate the keepers thereof, and to establish and enforce rules governing the same; Pounds.

27. To regulate the storage of gunpowder, dynamite, Gunpowder.

nitroglycerine, and all powders and explosives containing nitroclycerine, and all other explosive and inflammable materials and articles dangerous to life and property;

Stovepipes. 28. To regulate the construction of and cleaning of fireplaces, chimneys, stovepipes, stoves, ovens, boilers, kettles, forges, or any other apparatus used in any building, manufactory or business, which may be dangerous in causing or promoting fires, and to prescribe limits within which no dangerous or obnoxious or offensive business shall be carried on;

Riots, etc. 29. To prevent and restrain riots, noises, disturbances or disorderly assemblies in any street, alley, commons, house or place in the town or village;

Concealed weapons. 30. To regulate, prevent and punish the carrying of concealed weapons;

Vagrants. 31. To arrest, regulate, punish, fine, imprison, or set at work on streets, or elsewhere, all vagrants, and persons found in the town or village, without visible means of support, or some legitimate business;

Water rights. 32. To acquire water rights for the benefit of the inhabitants of such town or village, for culinary, domestic, or irrigating purposes, for the extinguishing of fires, and for all other useful and necessary purposes for which water can be beneficially used for the benefit of the inhabitants of such town or village;

Water-works. 33. To erect and maintain water works for the purpose of furnishing water to the inhabitants of such town or village, and for the extinguishment of fires, and for such purposes to condemn lands, to acquire by condemnation, or otherwise, waterways, springs, streams and watercourses, the right of way and to do all things necessary to enable such town or village to acquire and maintain water works within the limits, not inconsistent with the laws of the United States or of this Territory;

Public library. 34. To establish and maintain a free public library and reading room in such town or village to be under the management and control of the Board of Trustees, to appoint a librarian and janitor therefor, and to levy by tax upon the taxable property within said town or village, annually, not exceeding two mills on the dollar, for the purpose of establishing and maintaining such free public library and reading room, said taxes to be levied and collected in the same manner as other taxes are levied and collected in said town or village for general purposes;

General welfare. 35. To make all such ordinances, by-laws, rules, regulations and resolutions not inconsistent with the laws of the United States or of this Territory, as may be expedient to maintain the place, good government and welfare of the town or village and its trade, commerce and manufactories;

Penalties. 36. To enforce all ordinances by inflicting penalties for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs together with imprisonment until the amount of said judgment and costs are paid.

Fines. 13 ses., 91. Sec. 2231. All moneys which are collected within the limits of such town or village for liquor and gambling licenses, or from fines or penalties under any ordinance of said town, must be paid over by the officers collecting the same, to the Trustees of the several school districts of said town or village for the benefit of the public schools of said town or village, the same to be divided, in case there are more than one district in said town or village, among the several districts in proportion to the number of children of school age residing in each, according to the last school census in such district.

Officers. 14 ses.

SEC. 2232. (Sec. 1.) That the Marshal, City Attorney, Corporation Counsel, and all other officials of all cities and towns now incorporated or hereafter to be incorporated either under special charter, or the provisions of this act, shall be elected by the qualified voters of each incorporated city or town at the same time and in the same manner, in each city and town as is now prescribed by the respective charters thereof, or by the general law for that of members of City Council, or Town Council, or Boards of Trustees; and that the City or Town Council, or Boards of Trustees of each incorporated cities or towns, shall have power to fix and regulate by ordinance the salary and fees of all officials specified in this section at their last regular meeting prior to the election of such officers, in each towns or cities, and at any time thereafter to prescribe their duties, and said City or Town Council, or Board of Trustees shall have power to fill all vacancies that may occur until next election; and shall require the Treasurer of such town or city, and such other officers as they shall in their opinion deem necessary or expedient, to give bonds, with sufficient security, to be approved by them in such sum or sums as they shall deem necessary, to secure the faithful performance of the duties of their respective offices and security for the proper appropriation and payment of all moneys coming into their hands as such officers.

Repeal. 14 ses.

SEC. 2232*a*. (Sec. 2.) That all acts or parts of acts in special charters of cities or towns, or of the general law relating to cities or towns in conflict to this act, are hereby repealed. [Act Feb. 10, 1887. In effect immediately.]

Debts and expenses. 13 ses., 91.

SEC. 2233. The Board of Trustees have power to appropriate money and provide for the payment of the debts and expenses of the town or village, and when such Board of Trustees order any account or demand to be paid, if money has been appropriated for that purpose and not otherwise, the Clerk must draw a warrant upon the Treasurer for the amount ordered paid, which warrant must be drawn on the special or general fund appropriated therefor, and be signed by the chairman of the Board of Trustees, and countersigned by the Clerk.

Borrow money. 13 ses , 92.

SEC. 2234. The Board of Trustees have power to borrow money on the credit of the town or village and to pledge its credit, revenue and public property for the payment thereof, *Provided*, That no sum or sums exceeding one thousand dollars must be borrowed, until the Board of Trustees are instructed so to do by a majority of all the votes cast at an election held in such town or village for that purpose.

Funding indebtedness. 13 ses., 92.

SEC. 2235. The Board of Trustees have power to provide for the issuing of bonds for the purpose of funding the indebtedness of the town or village. Said bonds must be payable in not less than five, nor more than twenty years from the date of their issue, and must bear interest at a rate not exceeding ten per cent per annum, with interest coupons attached, payable annually or semi-annually, and to levy taxes upon all taxable property in such town or village, in addition to other taxes, for the payment of said coupons as they become due, and such taxes shall be payable only in cash or said coupons. But the bonded indebtedness must not at any one time exceed ten per cent of the value of the real estate in said town or village according to the assessment of the preceding year. And no bonds must be negotiated by said Board of Trustees at less than their par value.

Sinking fund.
13 ses., 92.

SEC. 2236. The Board of Trustees have power to make provisions for a sinking fund, to pay at maturity the bonded indebtedness of the town or village and to levy and collect taxes on all the taxable property in the town or village, in addition to other taxes, for the purpose of paying the same, and to provide that said tax be paid in cash; and whenever any town or village has heretofore issued bonds by virtue of any special authority derived from the Legislature of this Territory, the Board of Trustees have power to levy and collect taxes for the purpose of paying such bonds as is provided in the laws giving such authority.

Power to make improvements.
13 ses., 92.

SEC. 2237. The Board of Trustees have power to make any and all improvements of a general nature in the town or village, and, for the purpose of paying for the same, may borrow money on such terms as the Board of Trustees may prescribe, subject, however, to the limitations and restrictions provided in this Title, and for money so borrowed may issue the bonds of the town or village, due in not less than five nor more than twenty years from the date of their issue, with interest thereon at a rate not exceeding ten per cent per annum, with interest coupons thereto attached, payable annually, or semi-annually, and may levy taxes on all the taxable property within the town or village, in addition to other taxes, to pay such bonds at their maturity, and the interest coupons as they respectively come due, which taxes must be paid in cash only.

Taxes for general purposes
13 ses., 93

SEC. 2238. The Board of Trustees have power to levy and collect taxes for general revenue purposes, not to exceed ten mills on the dollar in any one year, on all property within the limits of such incorporated towns or villages, taxable according to the laws of the Territory of Idaho; the valuation of such property to be taken from the books or assessment rolls of the County Assessor of the county in which such town or village is situated for the last preceding assessment.

Assessment.
13 ses., 93.

SEC. 2239. The Assessor appointed by the Board of Trustees of such town or village, must make a fair and full assessment of all the real and personal and other property within the limits of such town or village subject to taxation under the laws of the Territory; and to do this he must copy and make up such list or assessment so to be made by him from the books and assessment rolls of the last preceding assessment made under the laws of this Territory by the Assessor of the county in which such town or village is situated, and he must deliver the same to the Board of Trustees; and the Clerk of said Board of Trustees must, under the direction of said Board of Trustees, prepare and deliver to the

Treasurer of such town or village, a duplicate of said tax-list, keeping in his office the original list returned by the Assessor as aforesaid, and he may receive therefor such compensation as the Board of Trustees may prescribe.

Notice. collection of taxes. 13 ses., 93.

SEC. 2240. The Treasurer of such town or village receiving such duplicate tax list, within ten days thereafter must give notice that the said tax list is in his hands for the collection of taxes; that the taxes if not paid within three months from the date of such notice, will be delinquent and subject to all the forfeitures and penalties attaching to delinquent taxes under the general laws of the Territory; such notice must be made by publication one time in a newspaper published in the town or village, or in case no newspaper is published therein, then by printed or written notices posted in four public places within the limits of said town or village.

Taxes delinquent. 13 ses., 94.

SEC. 2241. Whenever any of said taxes become delinquent as aforesaid, it is the duty of the Treasurer of said town or village to deliver to the Tax Collector of the county in which said town or village is situated, at least thirty days before the time appointed by law for advertising lands for sale for delinquent county taxes, a certified list of the delinquent taxes due the said town or village as well for previous years as for that year, and the lots and parcels of land upon which such delinquent taxes may be due must be advertised and sold by such County Tax Collector at the same time and in the same manner and with like effect as lands or lots are sold by such County Tax Collector for county taxes and such County Tax Collector must make out certificates of sale, and must make, execute and deliver tax collector's deeds for lots or land so sold within the same time and in the same manner as is now provided by law when land is sold for delinquent county taxes, and such certificates and deeds have the same force and effect as those made in cases of sale for delinquent county taxes; the County Tax Collector must forthwith pay over to the Town Treasurer all moneys collected by him for delinquent taxes as aforesaid.

Cemetery. 13 ses., 94.

SEC. 2242. The Board of Trustees have power to purchase, hold and pay for lands, not exceeding twenty acres in one body, within or outside of the limits of such town or village, for a cemetery for the burial of the dead, and to survey, map, grade, fence, ornament and otherwise improve such cemetery grounds, and to provide for the expense thereof; to convey cemetery lots by certificates signed by the Chairman of the Board of Trustees, and countersigned by the Clerk of the Board, and such certificate vests in the proprietor, his heirs and assigns, a right in fee simple to such lot for the sole purpose of interment; the Board may pass rules, regulations and ordinances regulating, protecting and governing the cemetery, the owners of lots therein, and visitors and trespassers thereon; the moneys received from the sale of such cemetery lots must be kept separate from other moneys belonging to such town or village, and be known as the Cemetery Fund, and such moneys must be applied in payment for such cemetery ground, when such payment is not otherwise provided for by the Board of Trustees and for the improvement and ornamentation thereof.

By-laws, etc. 13 ses., 94.

SEC. 2243. The Chairman of the Board of Trustees must cause to be printed and published the by-laws and ordinances of the Board for the information of the inhabitants, and cause the same to be carried into effect, and in case of the absence of the Chairman of the Board from any meeting of the Board of Trustees, such Board may appoint a Chairman, pro tempore, who may, for the time being, exercise and have the same powers and perform the same duty of the regular Chairman.

vacancies. 13 ses., 94.

SEC. 2244. All vacancies in the Board of Trustees must be filled by a special election called by the Board after ten days' notice thereof.

Election board. 13 ses., 95

SEC. 2245. The Board of Trustees must, as often as may be necessary, appoint five qualified voters to act as an Election Board, three of whom must act as Judges, and two as Clerks of Election, who must control and superintend all elections for Trustees or other officers required to be elected under this Title.

Notice of elections. 13 ses., 95.

SEC. 2246. The Board of Trustees must give public notice of the time and place of holding such elections, said notice to be given not less than ten nor more than twenty days previous to the election.

Vacancies. 13 ses., 95.

SEC. 2247. If on any day appointed for holding any election under the provisions of this Title, any of the Judges or Clerks of Election fail to attend, the electors present may fill such vacancies from among the qualified electors present.

Qualified electors. 13 ses., 95.

SEC. 2248. All male persons, citizens of the United States, of the age of twenty-one years, who are qualified electors in this Territory, residing within the limits of such incorporated town or village, and who have resided within the same for four months next preceding the election, are entitled to vote at all elections of town officers, or upon any question submitted to the electors of such towns or villages by the Board of Trustees.

Polls kept open. 13 ses., 95.

SEC. 2249. At all elections as herein provided for, the polls must be kept open from nine o'clock in the morning until six o'clock in the afternoon.

Corporation, dissolution of. 13 ses., 95.

SEC. 2250. No corporation is dissolved by this Title, and all towns and villages heretofore incorporated under the laws of this Territory, and not heretofore dissolved as provided by law, may continue under their respective charters.

CIVIL CODE

OF

IDAHO TERRITORY.

PART SECOND.—CIVIL.

PRELIMINARY PROVISIONS.

SECTION
2100. Title of Part Second of the Revised Statutes and how cited.

Title II, how cited.

SECTION 2400. Part Second of the Revised Statutes shall be known as the Civil Code of the Territory of Idaho, and whenever cited, enumerated, referred to or amended, may be designated simply as the Civil Code, adding, when necessary, the number of the section.

TITLE I.

PERSONS.

SECTION
2405. Minors, who are.
2406. Unborn child.
2407. When minor may disaffirm.
2408. Cannot disaffirm contract for necessaries.
2409. Nor certain obligations.
SECTION
2410. Contracts of persons without understanding.
2411. Contracts with other insane persons.
2412. Powers of persons whose incapacity has been adjudged.

Minors. Who are. Comp laws, 749.

SECTION 2405. Minors are:

1. Males under twenty-one years of age;
2. Females under eighteen years of age.

Unborn child.

SEC. 2406. A child conceived, but not yet born, is to be deemed an existing person so far as may be necessary for its interests, in the event of its subsequent birth.

Minor, disaffirmance of contract.

SEC. 2407. In all cases other than those specified in the next two sections, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent.

Cannot disaffirm contract for necessaries.

SEC. 2408. A minor cannot disaffirm a contract otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

Nor certain obligations.

SEC. 2409. A minor connot disaffirm an obligation otherwise valid, entered into by him under the express authority or direction of a statute.

Persons without understanding, liabilities of, etc.

SEC. 2410. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

Contract of insane subject to rescission.

SEC. 2411. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission.

Powers of persons whose incapacity has been adjudged.

SEC. 2412. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

TITLE II.

MARRIAGE.

CHAPTER I.

THE CONTRACT OF MARRIAGE.

SECTION
2420. What constitutes marriage.
2421. Minors capable of contracting marriage.
2422. Marriage, how manifested and proved.
2423. Certain marriages voidable.
2424. Incompetency of parties to.
2425. Of whites and negroes or mulattoes void.
2426. Polygamy forbidden.
2427. Release from marriage contract, when.
2428. Marriages contracted without the Territory.

SECTION
2429. Marriage, how solemnized.
2430. Duty of person solemnizing marriage.
2431. By whom solemnized.
2432. No particular form of solemnization.
2433. Proof of qualification.
2434. Certificate of marriage.
2435. Certificate recorded.
2436. Certificate to parties.
2437. Penalty for neglect.
2438. Fees.
2439. Validity.
2440. Evidence.

SECTION 2420. Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization or by a mutual assumption of marital rights, duties or obligations.

What constitutes marriage.
9 ses., 24.

SEC. 2421. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of sixteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

Minors capable of contracting marriage.
9 ses., 24.

SEC. 2422. Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

Marriage, how manifested and proved.
9 ses., 24.

SEC. 2423. If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable.

Marriage, when voidable.
9 ses., 25.

SEC. 2424. Marriages between parents and children, ancestors and descendants of every degree, and between brother and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

Incompetency of parties to.
9 ses., 25.

SEC. 2425. All marriages of white persons with negroes or mulattoes are illegal and void.

Negroes.
N. S.

SEC. 2426. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning unless:

Second marriage, when illegal and void.
9 ses., 25.

1. The former marriage has been annulled or dissolved;
2. Unless such former husband or wife was absent, and not known to such person to be living for the space of five successive years immediately preceding, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

Release from contract.

SEC. 2427. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

Marriages without the Territory. 9 ses., 25.

SEC. 2428. All marriages contracted without this Territory, which would be valid by the laws of the country in which the same were contracted, are valid in this Territory.

Marriages, how solemnized, 9 ses., 25.

SEC. 2429. Marriage must be solemnized, authenticated, and recorded as provided in this chapter, but non-compliance with its provisions does not invalidate any lawful marriage.

Duty of person solemnizing marriage. 9 ses., 25.

SEC. 2430. All persons herein authorized to solemnize marriages must ascertain and be assured of:

First. The identity of the parties;

Second. Their real and full names and places of residence;

Third. That they are of sufficient age to be capable of contracting marriage;

Fourth. If the male is under the age of eighteen or the female under the age of sixteen years, the consent of the father, mother, or guardian, if any such, is given, or that such non-aged person has been previously but is not at the time married; and that the parties applying for the rites of marriage, and making such contract, have a legal right so to do.

By whom solemnized. 9 ses., 25.

SEC. 2431. Marriage may be solemnized by either a Justice of the Supreme Court, District or Probate Judge, the Governor, a Justice of the Peace, Mayor, priest, or minister of the gospel of any denomination.

Form of solemnization, none. 9 ses., 25.

SEC. 2432. No particular form for the ceremony of marriage is required. but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.

Proof of qualification 9 ses., 26.

SEC. 2433. The person solemnizing the marriage may administer oaths and examine the parties and witnesses for the purposes of satisfying himself that the contracting parties are qualified under the requirements of this chapter.

Certificate of marriage 9 ses., 26.

SEC. 2434. Every person solemnizing a marriage must make a record thereof, and within thirty days after such marriage, make and deliver to the Recorder of the county where the marriage took place, a certificate, under his hand, containing the names and residences of the parties, and of at least two witnesses present, and of the time and place of such marriage; and when the consent of the parent or guardian is necessary, stating that the same is duly given.

Certificate recorded. 9 ses., 26.

SEC. 2435. All such certificates must be filed and recorded by the Recorder in a book to be kept by him for that purpose; and he may receive a fee of one dollar from the person solemnizing the marriage, who may demand the same from the parties before the marriage.

Certificate to parties. 9 ses., 26.

SEC. 2436. When a marriage has been solemnized, the person solemnizing the same must give to each of the parties, if required, a certificate thereof.

Penalty for neglect. 9 ses., 26.

SEC. 2437. Every person solemnizing a marriage, who neglects to make and deliver to the Recorder a certificate thereof within the time above specified, forfeits and must pay for such neglect, the sum of twenty dollars; and every Recorder who neglects to record such certificate so delivered, forfeits the like penalty.

Fees. 9 ses., 26.

Sec. 2438. The person solemnizing a marriage is for such service entitled to receive from the parties married the sum of five dollars, but may receive any other or greater sum voluntarily given by the parties to such marriage.

Validity. 9 ses., 26.

Sec. 2439. No marriage solemnized by any person professing to be a Judge, Justice, or minister, is deemed or regarded void, nor is the validity thereof to be in any way affected on account of any want of jurisdiction or authority; *Provided*, It be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Evidence. 9 ses., 27.

Sec. 2440. The original certificate and record of marriage made by the Judge, Justice, or minister, as prescribed in this chapter, and the record thereof by the Recorder of the county, or a copy of such record duly certified by such Recorder, must be received in all courts and places as presumptive evidence of the fact of such marriage.

CHAPTER II.

Divorce.

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2451. Action to obtain decree of nullity in certain cases, when and by whom commenced.
2452. Children of annulled marriage.
2453. Custody of children.
2454. Effect of judgment of nullity.
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2457. Causes for divorce.
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Grounds for annulment of marriage. Act January 13, 1875.

Section 2450. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabits with the other as husband and wife;
2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;
3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabit with the other as husband or wife;
4. That the consent of either party was obtained by fraud.

unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife;

6. That either party was, at the time of marriage, physically in capable of entering into the married state, and such incapacity continues, and appears to be incurable.

Action to obtain decree of nullity, when and by whom may be commenced

SEC. 2451. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one; by the party to the marriage who was married under the age of legal consent, within four years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent;

2. For causes mentioned in subdivision two; by either party during the life of the other, or by such former husband or wife;

3. For causes mentioned in subdivision three; by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

4. For causes mentioned in subdivision four; by the party injured, within four years after the discovery of the facts constituting the fraud;

5. For causes mentioned in subdivision five; by the injured party, within four years after the marriage;

6. For causes mentioned in subdivision six; by the injured party, within four years after the marriage.

Children of annulled marriage.

SEC. 2452. When a marriage is annulled on the ground that a former husband or wife is living, or on the ground of insanity, children begotten before the judgment are legitimate and succeed to the estate of both parents.

Custody of children.

SEC. 2453. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Effect of judgment of nullety.

SEC. 2454. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

Marriage, how dissolved.

SEC. 2455. Marriage is dissolved only:

1. By the death of one of the parties; or

2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

Effect of judgment.

SEC. 2456. The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons.

Causes for divorce.

SEC. 2457. Divorces may be granted for any of the following causes:

1. Adultery;
2. Extreme cruelty;
3. Willful desertion;
4. Willful neglect;
5. Habitual intemperance;
6. Conviction of felony.

SEC. 2458. Adultery is the voluntary sexual intercourse of a married person with a person, other than the offender's husband or wife.

Adultery defined.

SEC. 2459. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

Extreme cruelty, what.

SEC. 2460. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Desertion, what.

SEC. 2461. Willful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy or dissipation.

Willful neglect, what.

SEC. 2462. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

Habitual intemperance, what.

SEC. 2463. Willful desertion, willful neglect or habitual intemperance must continue for one year before either is a ground for divorce.

Intemperance, etc., for one year.

SEC. 2464. Divorces must be denied upon showing:

Divorces denied, on showing what.

1. Collusion; or
2. Condonation; or
3. Recrimination; or
4. Limitation and lapse of time.

SEC. 2465. Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce for the purpose of enabling the other to obtain a divorce, and is a bar to an action for such acts.

Collusion, what.

SEC. 2466. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

Recrimination, what.

SEC. 2467. Condonation of a cause of divorce shown in the answer as a recriminatory defense, is a bar to such defense when the condonee has fully performed the marital duties, and is without reproach since the condonation, or if two years or more have elapsed after the condonation.

Condonation. N. S.

SEC. 2468. A divorce must be denied:

Divorces denied, when. N. S.

1. When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or
2. When the cause is conviction of felony, and the action is not commenced before the expiration of one year after a pardon or the termination of the period of sentence;
3. In all other cases when there is an unreasonable lapse of time before the commencement of the action.

SEC. 2469. A divorce must not be granted unless the plaintiff has been a resident of the Territory for six months next preceding the commencement of the action.

Divorces granted, when. 8 ses., 639.

SEC. 2470. In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife, does not apply. After separation each may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

Proof of actual residence required. N. S.

Divorce not granted by default, etc. 8 ses., 640.

SEC. 2471. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

Expense of action. 8 ses., 640.

SEC. 2472. While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action.

Orders respecting custody of children. Act Jan'y 13, 1875.

SEC. 2473. In an action for divorce the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

Support of wife and children on divorce or separation granted wife. Act Jan'y 13, 1875.

SEC. 2474. Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

Security for maintenance and alimony. N. S.

SEC. 2475. The court may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

Court must resort to what, in executing certain sections. Act Jan'y 13, 1875.

SEC. 2476. In executing the four preceding sections the court must resort:

1. To the community property; then
2. To the separate property of the husband.

When court may withhold allowance.

SEC. 2477. When the wife has a sufficient separate estate, or there is community property sufficient to give her alimony or a proper support, the court must withhold any allowance to her out of the separate property of the husband.

Education of children.

SEC. 2478. The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

Legitimacy of issue. Act Jan'y 13, 1875.

SEC. 2479. When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case.

Community, property and homestead, how disposed of on divorce. Act Jan'y 6, 1875.

SEC. 2480. In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property and the homestead must be assigned as follows:

1. If the decree be rendered on the ground of adultery or extreme cruelty, the community property must be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties deems just;
2. If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property must be equally divided between the parties;
3. If a homestead has been selected from the community

property, it may be assigned to the innocent party, either absolutely or for a limited period, subject in the latter case to the future disposition of the court; or it may be divided or be sold and the proceeds divided;

4. If a homestead has been selected from the separate property of either, it must be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

Sec. 2481. The court, in rendering a decree of divorce, must make such order for the disposition of the community property, and of the homestead as in this chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

Order of court for disposition of property.

Sec. 2482. The disposition of the community property, and of the homestead, as above provided, is subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

Order subject to revision on appeal.

Sec. 2483. Exclusive original jurisdiction of all actions and proceedings under this chapter is in the District Court, and the Judge thereof at chambers may make all necessary orders for temporary alimony and support, and the expenses of the action and the custody of children and property during the pendency of the action.

Original jurisdiction under this chapter is in district court. Act Jan'y 13, 1875.

CHAPTER III.

Husband and Wife.

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2509. Marriage settlement contracts, how executed.
2510. To be acknowledged and recorded.
2511. Effect of recording.
2512. Minors may make marriage settlements.

Section 2493. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

Mutual obligations of. N. S.

Sec. 2494. The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

Husband, head of family. N. S.

Sec. 2495. All property of the wife, owned by her before marriage; and that acquired afterwards by gift, bequest, devise, or descent is her separate property.

Separate property of wife. Act Jan'y 6, 1875.

Sec. 2496. All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent is his separate property.

Separate property of husband. Act Jan'y 6, 1875.

Sec. 2497. All other property acquired after marriage by either husband or wife, including the rents and profits of the separate property of the husband or wife, is community property; unless by the instrument by which any such property is acquired by the wife it is provided that the rents and profits thereof be applied to her sole and separate use; in which case the management and disposal of such rents and

Community property. Act Jan'y 6, 1875.

profits belong to the wife, and they are not liable for the debts of the husband.

Husband to have management and control of wife's property. Act Jan'y 6, 1875.

SEC. 2498. The husband has the management and control of the separate property of the wife, during the continuance of the marriage, but no sale or other alienation of any part of such property can be made, nor any lien or incumbrance created thereon, unless by an instrument in writing, signed by the husband and wife, and acknowledged by her upon an examination, separate and apart from the husband, as upon a conveyance of real estate.

Mismanagement of husband, trustee appointed. Act Jan'y 6, 1875.

SEC. 2499. If the wife has just cause to apprehend that her husband has mismanaged or wasted, or will mismanage or waste, her separate property, she, or any other person in her behalf, may apply to the District Court for the appointment of a trustee to take charge of and manage her separate estate; such trustee may, for good cause shown, be, from time to time, removed by the court, and another appointed in his place. Before entering upon the discharge of his trust, he must execute a bond with sufficient sureties, to be approved by the court for the performance of his duties. In case of the appointment of a trustee for the wife, he must account for and pay over to the husband and wife, or either of them, the income and profits of the wife's estate in such manner and proportion as the court may direct.

Inventory of separate property of wife. Act Jan'y 6, 1875.

SEC. 2500. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by law for the acknowledgment or proof of a conveyance of real property by an unmarried woman, and recorded in the office of the Recorder of the county in which the parties reside.

Filing inventory notice of title. Act Jan'y 6, 1875.

SEC. 2501. The filing of the inventory in the Recorder's office is notice and prima facie evidence of the title of the wife.

Earnings of wife. N. S.

SEC. 2502. The earnings and accumulations of the wife and of her minor children living with her or in her custody, while she is living separate from her husband are the separate property of the wife.

Liability for debts. Act Jan'y 6, 1875.

SEC. 2503. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

Wife's property not liable for debts, etc. Act Jan'y 6, 1875.

SEC. 2504. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage.

Power of husband over community property.

SEC. 2505. The husband has the management and control of the community property, with the like absolute power of disposition (other than testamentary) as he has of his separate estate; but such power of disposition does not extend to the homestead or that part of the common property occupied or used by the husband and wife as a residence.

Courtesy and dower not allowed. Act Jan'y 6, 1875.

SEC. 2506. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

When wife must support husband.

SEC. 2507. The wife must support the husband out of her separate property when he has no separate property, and they no community property, and he from infirmity is not able or competent to support himself.

SEC. 2508. The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

Rights of husband governed by what. Act Jan'y 6, 1875.

SEC. 2509. All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as conveyances of land are required to be executed and acknowledged or proved.

Marriage settlement contracts, how executed. Act Jan'y 6, 1875.

SEC. 2510. When such contract is acknowledged or proved, it must be recorded in the office of the Recorder of every county in which any real estate may be situated which is granted or affected by such contract.

To be acknwledged and recorded. Act Jan'y 6, 1875.

SEC. 2511. The recording or non-recording of such contract has a like effect as the recording or non-recording of a conveyance of real property.

Effect of recording. Act Jan'y 6, 1875.

SEC. 2512. A minor capable of contracting marriage may make a valid marriage settlement.

Minors, marriage settlements. Act Jan'y 6, 1875.

TITLE III.

PARENT AND CHILD.

CHAPTER I.

CHILDREN BY BIRTH.

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2533. Wages of minors.
2534. Wife in certain cases may obtain custody of children.
2535. Child legitimized by marriage of parents.

Allowance to parent.

SECTION 2530. The proper court may direct an allowance to be made to the parent of a child, out of its property for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Reciprocal duties of parents and children.

SEC. 2531. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

When parents liable for necessaries.

SEC. 2532. If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

Wages of minors.

SEC. 2533. The wages of a minor employed in service may be paid to him, unless, within thirty days after the commencement of the service, the parent or guardian entitled thereto gives the employer notice that he claims such wages.

When wife may obtain custody of children.

SEC. 2534. When a husband and wife live in a state of separation, without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this Territory, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court must be guided by the welfare of the child.

Child legitimized, when.
9 ses., 27.

SEC. 2535. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

CHAPTER II.

ADOPTION.

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Child may be adopted.
10 ses., 8.

SECTION 2545. Any minor child may be adopted by any adult person, in the cases and subject to the rules prescribed in the chapter.

Who may adopt.
10 ses., 9.

SEC. 2546. The person adopting a child must be at least fifteen years older than the person adopted.

Consent necessary.
10 ses., 9.

SEC. 2547. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; nor can a married woman, not thus separated from her husband without his consent, provided the husband or wife, not consenting, is capable of giving such consent.

Consent of parents. 10 ses., 9.

SEC. 2548. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect. If it can be shown satisfactorily to the judge that the parent or parents have abandoned, or ceased to provide for its support, then it may be adopted by the written consent of its legal guardian. If no guardian then of its nearest relative. If no relative then by the consent of some person appointed by the judge to act in the proceedings as the next friend to such child. [Act Feb. 5, 1887. In effect June 1, 1887.]

14 ses.

Consent of child. 10 ses., 9.

SEC. 2549. The consent of a child, if over the age of twelve years, is necessary to its adoption.

Proceedings on adoption. 10 ses., 9. 13 ses., 25.

SEC. 2550. The person adopting a child, and the child adopted, and the other persons, if within or residents of the county, whose consent is necessary, must appear before the Probate Judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. But if the parent or guardian of the child, or either of them, is a non-resident of the county where the application is made, such non-resident parent or guardian may execute his consent in writing, and acknowledge the same before any officer authorized by the laws of this Territory to take acknowledgments of deeds, which consent being filed in the court where the application is made, is deemed a sufficient appearance on the part of such non-resident.

Judge's order. 10 ses., 9.

SEC. 2551. The Judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child thenceforth be regarded and treated in all respects as the child of the person adopting.

Effect of adoption. 10 ses., 9.

SEC. 2552. A child, when adopted, may take the name of the person adopting, and the two thenceforth sustain toward each other the legal relation of parent and child, and have all the rights and are subject to all the duties of that relation.

Effect on former relations of child. 10 ses., 9.

SEC. 2553. The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the child so adopted, and have no right over it.

Adoption of illegitimate child. 10 ses., 9.

SEC. 2554. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

TITLE IV.
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Corporations, public or private.

SECTION 2575. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the Territory; all other corporations are private.

Private corporations, how formed.

SEC. 2576. Private corporations may be formed by the voluntary association of any five or more persons in the manner prescribed in this Title. A majority of such persons must be *bona fide* residents of this Territory.

For any lawful purpose.

SEC. 2577. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves.

Articles of incorporation.

SEC. 2578. The instrument by which a private corporation is formed, is called "Articles of Incorporation."

Same, what to contain.

SEC. 2579. Articles of incorporation must be prepared setting forth:

First. The name of the corporation:

Second. The purpose for which it is formed:

Third. The place where its principal business is to be transacted;

Fourth. The term for which it is to exist, not exceeding fifty years;

Fifth. The number of its directors or trustees; and the names and residence of those who are appointed for the first year; *Provided,* At any time during the existence of the corporation, the number of the directors may be increased, in corporations for profit, by a majority of the stockholders of the corporations, to any number not exceeding eleven, who must be members of the corporation, whereupon a certificate, stating the number of directors, must be filed, as provided for the filing of original articles of incorporations;

Sixth. The amount of the capital stock, and the number of shares into which it is divided;

Seventh. If there is a capital stock, the amount actually subscribed, and by whom.

Same, further facts.

SEC. 2580. The articles of incorporation of any railroad, wagon road or telegraph organization must also state:

First. The kind of road or telegraph intended to be constructed;

Second. The place from and to which it is intended to be run, and all the intermediate branches;

Third. The estimated length of the road or telegraph line.

Same, how executed, by whom.

SEC. 2581. The articles of incorporation must be subscribed by five or more persons, a majority of whom must be resident freeholders of this Territory, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

Prerequisite in filing articles.

SEC. 2582. Each intended railroad, wagon road or telegraph corporation, before filing articles of incorporation, must have actually subscribed to its capital stock, for each mile of the contemplated work, the following amount, to wit:

First. One thousand dollars per mile of railroads;

Second. One hundred dollars per mile of telegraph lines;

Third. Three hundred dollars per mile, of wagon roads.

Subscription and payment before certificate.

SEC. 2583. Before the Secretary of the Territory or the Recorder of the county issues to any such corporation a certificate of the filing of articles of incorporations, there must be filed in his office an affidavit of the president, secretary or treasurer named in the articles that the amount of the capital stock thereof required by law has been actually subscribed.

Articles where filed, certificate.

SEC. 2584. Upon filing the articles of incorporation in the office of the County Recorder of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the County Recorder, with the Secretary of the Territory, and filing the affidavit mentioned in the last section, when such affidavit is required, the Secretary of the Territory or such County Recorder must issue to the corporation, over his official seal, a certificate that a copy of the articles, containing the required statement of facts, has been filed in his office; and thereupon the persons executing the articles and their associates and successors shall be a body politic and corporate, by the name stated in the articles, and for the term of fifty years, unless it is in the articles of incorporation otherwise stated, or by law otherwise specially provided.

Copy of articles, evidence.

SEC. 2585. A copy of any articles of incorporation filed in pursuance to this title and certified by the secretary of the Territory, or the Recorder of the proper county, must be received in all courts and other places as *prima facie* evidence of the facts therein stated.

Stockholders and members.

SEC. 2586. The owners of shares in a corporation which has a capital stock, are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

Articles filed in what counties.

SEC. 2587. No corporation formed under the provisions of this Title, shall purchase, locate, or hold, property in any county of this Territory, without filing a certified copy of its articles of incorporation in the office of the County Recorder of the county in which such property is situated, within sixty days after such purchase or location is made, and every corporation now in existence must, within ninety days after the passage of this Title, file a certified copy of its articles of incorporation, as provided in this section. Any corporation failing to comply with the provisions of this section, must not, while so in default, maintain or defend any action or proceeding in relation to such property.

By-laws, when, how and by whom adopted.

SEC. 2588. Every corporation formed under this Title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the laws of Congress and of this Territory. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and if such meeting be called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or, if none be published therein, then in a paper published at the capital of the Territory, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock subscribed, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

Directors, election of.

SEC. 2589. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of the election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in the last preceding section.

By-laws, for what may provide.

SEC. 2590. A corporation may, by its by-laws, where no other provision is specially made, provide, among other things, for:

First. The time, place, and manner of calling and conducting its meetings;

Second. The number of stockholders or members constituting a quorum;

Third. The mode of voting by proxy;

Fourth. The time of the annual elections of directors, and the mode and manner of giving notice thereof;

Fifth. The duties and compensation of officers;

Sixth. The manner of election, and the terms of office of all officers other than the directors; and

Seventh. Suitable penalties for violation of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

SEC. 2591. All by-laws adopted must be certified by a majority of the directors and the secretary of the corporation, and copied in a legible hand in some book kept in the principal office of the corporation in this Territory, to be known as the "Book of By-Laws," and no by-law shall take effect until so copied, and the book shall be open to the inspection of the public during office hours of each day, except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting of the stockholders or members called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or two-thirds of the members when there is no capital stock, or the power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, be delegated to the board of directors. This power, when so delegated, may be revoked by a similar vote at any regular meeting of the stockholders or members.

Same, recording and amending.

Whenever any amendment or new by-law is adopted it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, must be stated in the said book, and until so stated the repeal must not take effect.

SEC. 2592. The corporate powers, business and property of all corporations formed under this Title must be exercised, conducted and controlled by a board of not less than five nor more than eleven directors, to be elected from among the holders of stock, or when there is no capital stock, then from among the members of such corporation. A majority of the directors must be, in all cases, citizens and actual *bona fide* residents within this Territory.

Directors, how many and who to be

Directors of corporations for profit must be holders of stock therein, in an amount to be fixed by the by-laws. Directors of all other corporations must be members thereof. Unless a majority is present and acting, no business performed or act done by the board of directors is valid as against the corporation. Whenever a vacancy occurs in the office of directors, unless otherwise provided by the by-laws, such vacancy must be filled by the board.

SEC. 2593. At the first meeting at which the by-laws are adopted, or at such subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified.

Same, elected at first meeting.

SEC. 2594. All elections of directors must be by ballot, and a vote of stockholders representing a majority of the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to a choice.

Election, how conducted.

If there be capital stock in the corporation, each stockholder is entitled to one vote for each share held by him at all such elections, and at all elections at other meetings of stockholders.

Organization of board.

SEC. 2595. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and a treasurer. They must perform the duties enjoined on them by law and by the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is a valid corporate act, as though made by a majority of all the directors of the corporation.

Dividends only from surplus profits.

SEC. 2596. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they reduce or increase the capital stock, except as in this title specially provided.

For a violation of the provisions of this section, the directors, under whose administration the same may have occurred, (except those who may have caused their dissent therefrom to be entered at large on the minutes of directors at the time, or, when not present, when the same did occur) are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Directors removed from office.

SEC. 2597. No director can be removed from office unless by a vote of the stockholders holding two-thirds of the capital stock, or of two-thirds of the members, where there is no capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders or members for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting.

The notice must be given in the manner provided in section 2588 of this Title, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

Justice of peace may order meeting, when.

SEC. 2598. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any Justice of the Peace of the county where such corporation is established, may, on written application of three or more of the stockholders, or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the Justice may in the same warrant direct such person to preside at such meeting until a secretary is chosen and qualified, if there is no officer present legally authorized to preside thereat.

SEC. 2599. At all elections or votes had for any purpose, there must be a majority of the subscribed capital stock, or of the members, when there is no capital stock, represented either in person, or by proxy, in writing. Every person acting therein in person, or by proxy, or by representative, must be a member thereof, or a *bona fide* stockholder, having stock in his own name on the stock-books of the corporation, at least ten days prior to the election. Any vote or election had otherwise than in accordance with the provisions of this Title, is voidable at the instance of absent stockholders or members and may be set aside by petition to the District Court of the county where the same was held or to the Judge of said court at his chambers. Any regular or call meeting of the stockholders or members may adjourn from day to day, or from time to time, if from any reason there is not present a majority of the subscribed stock or members, or no election or majority vote had. Such adjournment and reasons thereof being recorded in the journal of proceedings of the board of directors.

Majority of stock must be represented.

SEC. 2600. The shares of stock of an estate of a minor, or insane person, may be represented by his guardian, and if a deceased person by his executor or administrator.

Stock of minors, etc.

SEC. 2601. If from any cause an election does not take place on the day appointed in the by-law, it may be held on any day thereafter, as may be provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered, a meeting may be called by the stockholders, as provided in section 2597 of this Title.

Election postponed.

SEC. 2602. Upon the application of any person, or body corporate, aggrieved by any election held by any corporate body, or any proceedings relating to any such election, the District Judge of the district in which such election is held, must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Before the proceedings are had under this section, five days' notice thereof must be given to the adverse party, or to those to be affected thereby, if found within the Territory.

Complaints and proceedings regarding elections.

SEC. 2603. Any officer of a corporation, who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records of books of the corporation, concerning the corporation or its business, which is false in any material representation, is liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they are jointly and severally so liable.

False certificates, reports or notices

SEC. 2604. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if at a meeting legally called and notified.

Meeting by consent

Proceedings binding.

SEC. 2605. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

Meetings, when held.

SEC. 2606. The meetings of the stockholders, members and board of directors of a corporation must be held at its office, or principal place of business.

When no provision, meetings how called.

SEC. 2607. When no provision is made in the by-laws for regular meetings of the directors, and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given by the secretary to each director, if within the Territory, on the order of the president, or if there be none, on the order of two directors.

Change of principal place of business.

SEC. 2608. Every corporation that has been or may be created under the general laws of this Territory may change its principal place of business from one place to another within this Territory. Before such change is made, the consent, in writing, of the holders of two-thirds of the capital stock, or of two-thirds of the members, when there is no capital stock, must be obtained and filed, notice of such intended removal or change must be published, at least once a week, for three successive weeks, as provided in section 2588, giving the name of the county where it is situated, and that to which it is intended to remove.

Stockholders liable for debts

SEC. 2609. Each stockholder of a corporation is individually and personally liable for such portions of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporations, incurred while he was such stockholder, he is relieved from any further personal liability for such debt, and if an action has been brought against him upon such debt, it must be dismissed, as to him, upon his paying the costs, or such portion thereof as may be properly charged against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred by the corporation; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, applies not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and, also, to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and, also, to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian, or trustee cannot be liable under the provisions of this section, by reason of any such investment; nor can the person for whose benefit this investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment must continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder, within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation, but the pledgor, or person, or estate represented, is to be deemed the stockholder, as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation not formed under the laws of this Territory, but doing business within this Territory, is the same as the liability of stockholder of a corporation created under the laws of this Territory.

Certificates, how and when issued.

SEC. 2610. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

Transfer of shares.

SEC. 2611. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by endorsement by the signature of the proprietor, or his attorney, or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the name of the parties by and to whom transferred, the number and designation of the shares, and the date of the entry. Corporations may, by by-laws, provide that no transfer of its stock shall be made upon its books until all indebtedness to the corporation of the person in whose name the stock stands, whether for assessments, calls, or otherwise is paid.

Shares held by married women, etc.

SEC. 2612. Shares of stock in corporations, held or owned by a married woman, may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a *femme sole*. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman touching any shares of stock of any corporation, owned by her, is valid and binding without the signature of her husband, the same as if she were unmarried.

Non-resident stockholders.

SEC. 2613. When shares of stock in a corporation are owned by a non-resident of the Territory, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing certificate therefor to the transferee, may require satisfactory evidence that the non-resident owner was alive at the date of the transfer, and if such satisfactory evidence be not furnished, may require a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or approved by the Judge of the district court of the district in which the principal office of the corporation is situate, conditioned to protect the corporation against any liability to the heirs or legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof is liable for refusing to enter the transfer on the books of the corporation.

Assessments, when may be levied.

SEC. 2614. The directors of any corporation formed or existing under the laws of this Territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form, and to the extent herein provided.

Limitation of assessments

SEC. 2615. No one assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided as follows:

First. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount;

Second. The directors of railroad corporations may assess the capital stock in installments of not more than ten per centum per month, unless in the articles of incorporation it is otherwise provided;

Third. The directors of fire insurance corporations may assess such a percentage of the capital stock as they deem proper.

Levy of assessment

SEC. 2616. No assessment must be levied while any portion of a previous one remains unpaid, unless:

First. The power of the corporation has been exercised in accordance with the provisions of this Title for the purpose of collecting such previous assessment;

Second. The collection of the previous assessment has been enjoined; or,

Third. The assessment falls within the provisions of one of the subdivisions of the last preceding section.

What order shall contain.

SEC. 2617. The order levying an assessment must specify the amount thereof, when, to whom and where payable; fix the day subsequent to the full term of publication of the assessment notice, on which the unpaid assessments will be delinquent, not less than thirty or more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

Notice of assessment.

SEC. 2618. Upon the making of the order the secretary must cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given that at a meeting of the directors held on the (date) an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where) any stock upon which this assessment remains unpaid on the (day fixed) will be delinquent, and advertised for sale at public auction, and unless payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with costs of advertising and expenses of sale. (Signature of secretary with location of office.)

Same, and service publication of.

SEC. 2619. The notice must be published once a week, for four successive weeks, in some newspaper of general circulation published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if situated in a different county and a paper be published therein. If there be no newspaper published in the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published at the capital of the Territory.

Delinquent notice.

SEC. 2620. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice heretofore provided for has been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice:—There is delinquent upon the following described stock on account of assessment levied on the (date), (and assessments previous thereto, if any), the several amounts set opposite the names of the respective shareholders as follows: (names, number of certificate, number of shares, amount.) And in accordance with law, so many shares of each parcel of such stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with the cost of advertising and expenses of the sale. (Name of secretary, with location of office.)

Same, contents of.

SEC. 2621. The notice must specify every certificate of stock, the number of shares it represents and the amount due thereon, except when certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon must be stated.

Same, publication of.

SEC. 2622. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and legal holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

Jurisdiction, acquired how.

SEC. 2623. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale, upon which any portion of the assessment or cost of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of advertising and sale.

Sale, how conducted.

SEC. 2624. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell, or cause to be sold at public auction to the highest bidder, for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

Purchaser.

SEC. 2625. The person offering at such sale to pay the assessment and costs for the smallest number or shares or fraction of a share, is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessments and costs.

When corporation may purchase.

SEC. 2626. If at the sale of stock, no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president or any director thereof, at the amount of the assessment, charges and costs due; and said amount must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation made. While the stock remains the property of the corporation it is not assessable, nor must any dividend be declared thereon, but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

Stock purchased by corporations.

SEC. 2627. All purchases of its own stock made by any corporation, vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws, on vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation, it shall not be voted upon, but a majority of the remaining shares is a majority of the stock for all purposes of election or voting.

Postponement of sale.

SEC. 2628. The dates fixed in any notice of assessment or notice of delinquent sale, published as aforesaid, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation: but no such order is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Assessment not invalidated

SEC. 2629. No assessment is invalidated by a failure to make publication of the notices, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings except the levying of assessment, are void, and publication must begin anew.

SEC. 2630. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment; irregularity or defect in the notice of sale or in its publication; or defect or irregularity in the sale; unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid or may be due thereon, and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced within six months after such sale was made.

Action to recover stock sold.

SEC. 2631. The publication of notice required by this Title may be proved by the affidavit of the printer, publisher, foreman or principal clerk of the newspaper in which the same was published; and the affidavit of the Secretary or auctioneer is *prima facie* evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. Such affidavit must be filed in the office of the corporation, and copies of the same, certified by the Secretary thereof, are *prima facie* evidence of the facts therein stated. Certificates of files and records of the corporation in his office, signed by the secretary, and under the seal of the corporation, are *prima facie* evidence of their contents.

Proof of publication.

SEC. 2632. On the day specified for declaring the stock delinquent, or at any time subsequent thereto, and before the sale, the board of directors may elect to waive further proceedings by sale, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

Waiver of sale, action for assessment.

SEC. 2633. Every corporation, as such, has power:

Powers of corporations.

First. Of succession, by its corporate name, for the period limited; and when no period is limited, perpetually;

Second. To sue and be sued, in any court, as a natural person may;

Third. To make and use a common seal, and alter the same at pleasure;

Fourth. To purchase, hold and convey such real and personal estate as the purposes of the corporation may require, not exceeding the amount limited by this Title;

Fifth. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation;

Sixth. To make by-laws not inconsistent with any existing law, for the management of its business and property, the regulation of its affairs, and for the transfer of its stock;

Corporations.

Seventh. To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments;

Eighth. To enter into any contracts or obligations essential, necessary or proper to the transaction of its ordinary affairs, or for the purposes of the corporation.

SEC. 2634. No corporation shall emit paper money or create or issue bills, notes or other evidences of debt, upon loans or otherwise, for circulation as money.

Not to emit paper money.

Misnomer.

SEC. 2635. The misnomer of a corporation in any written instrument does not invalidate the instrument, if it can be reasonably ascertained from it what corporation is intended.

To organize within one year

SEC. 2636. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this Title, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such *de facto* corporation may be a party; but such inquiry may be had at the suit of The People of The Territory, on the information of the District Attorney of the county of the principal place of business of the corporation.

Increasing and diminishing capital stock.

SEC. 2637. Every corporation may increase or diminish its capital stock as in this section provided:

First. By a majority vote of the directors there may be called a meeting of the stockholders, to be convened for the purpose of increasing or diminishing the capital stock;

Second. Personal notice of the time and place of such meeting, and the object thereof must be served on each stockholder resident in this territory; or, in lieu thereof, the notice must be published in every issue of a newspaper published in the county where the principal place of business is located, for four weeks successively;

Third. The notice must also contain the amount to which it is proposed to increase or diminish the capital stock;

Fourth. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation or the estimated cost of the works which it may be the object or purpose of the corporation to construct;

Fifth. At least two-thirds of the entire capital stock must vote in favor of such increase or diminution before the same is effected;

Sixth. A certificate signed and verified by the chairman and secretary of the meeting, must be made, showing a strict compliance with all the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting, the vote by which the object was accomplished;

Seventh. This certificate must be subscribed by a majority of the directors, and duplicates made, one to be filed in the office of the County Recorder and one in the office of the Secretary of the Territory, as provided for original articles of incorporation, and thereupon the capital stock is so increased or diminished;

Eighth. The written assent of the holders of three-fourths of the subscribed capital stock is as effectual to authorize the increase or diminution of the capital stock, as if a meeting were called and held; and upon written assent, the directors may proceed to make the certificate herein provided for.

Acquisition of real property.

SEC. 2638. No corporation must acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except such right of way or other property as it may acquire under the laws of Congress, or as may be otherwise specially provided. A corporation may acquire real property, as provided in the Code of Civil Procedure, when needed for any of the uses and purposes there mentioned.

Records of corporations.

SEC. 2639. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent and, if requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full—all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

Same.

SEC. 2640. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such Stock and Transfer Book must be kept open to the inspection of any stockholder, member, or creditor.

Right of repeal reserved.

SEC. 2641. The legislature may at any time amend or repeal this Title or any chapter, articles or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

Franchise, sold under execution.

SEC. 2642. For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise and all the rights and privileges thereof, may be levied upon and sold under execution in the same manner and with like effect as any other property.

Purchaser may conduct business.

SEC. 2643. The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof and must thereafter conduct the business of such corporation, with all its powers, privileges, and subject to all its liabilities, until the redemption of the same as hereinafter provided.

Same, may recover penalties, etc.

SEC. 2644. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had, is a bar to any subsequent action by or on behalf of the corporation for the same.

Effect of sale.

SEC. 2645. The corporation whose franchise is sold, as in this Title provided, in all other respects retains the same powers, is bound to discharge the same duties, and is liable to the same penalties and forfeitures as before such sale.

Redemption of franchise.

SEC. 2646. The corporation may, at any time within one year after such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor, with ten per cent interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender, the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

Sale, when made.

SEC. 2647. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business.

On dissolution, directors as trustees for creditors.

SEC. 2648. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders, or members of the corporation dissolved, and have full power to settle the affairs of the corporation.

May extend term of existence.

SEC. 2649. Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock, or by two-thirds of the members; or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, must be signed by the chairman and secretary of the meeting of a majority of the directors and be filed in the office of the County Recorder, where the original articles of incorporation were filed, and a certified copy thereof in the office of the Secretary of the Territory, and thereupon the term of the corporation for the specified period.

Existing corporations may continue under this chapter.

SEC. 2650. Any existing corporation formed under any law of this Territory may continue under this chapter, or under the provisions of any subsequent chapter particularly applicable thereto, by the unanimous vote of all its directors, or its election so to continue may be made at any annual meeting of the stockholders, or members or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote or upon the written consent of the stockholders or members, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is made at any such meeting signed by the chairman and secretary of the meeting and a majority of the directors, must be filed in the office of the Recorder of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the Secretary of the Territory, and thereafter the corporation must continue its existence under the provisions of the Title, which are applicable thereto; and must possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

Same.

SEC. 2651. No corporation formed or existing before twelve o'clock, noon, of the day upon which this Title takes effect, is effected by the provisions of this Title unless such corporation elects to continue its existence under it as provided in the last section, but the laws under which such corporations were formed and exist are applicable to all such corporations, and are repealed subject to the provisions of this section.

Application of this chapter.

SEC. 2652. The provisions of this chapter are applicable to every corporation, unless such corporation is exempted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this chapter, in which case the special provision prevails.

Foreign corporations to designate person upon whom process may be served.

SEC. 2653. Every corporation not created under the laws of this Territory, doing business in this Territory, must within three months after the passage of this Title, or from the time of commencement to do business in this Territory, designate some person residing in the county in which the principal place of business of such corporation, in this Territory, is conducted, upon whom process issued by authority of, or under any law of this Territory, may be served, and within the time aforesaid must file such designation in the office of the Secretary of the Territory, and in the office of the Clerk of the District Court for such county, and a copy of such designation certified by either of said officers must be evidence of such appointment; and it is lawful to serve on such person, so designated, any process issued as aforesaid, and such service must be deemed a valid service thereof.

Every such corporation which fails to comply with the provisions of this section shall be denied the benefit of the Statutes of this Territory limiting the time of the commencement of civil actions, and any limitations in such Statutes shall only run in favor of any such corporation during such time as shall be within the Territory such person duly designated as aforesaid, upon whom such service can be made.

Rights of foreign corporations.

Provided, further, That such foreign corporations complying with the provisions of this section shall have all the rights and privileges of like domestic corporations, including the right to exercise the right of eminent domain, and shall be subject to the laws of this Territory applicable to like domestic corporations.

["Act of February 10th, 1887, in effect June 1st, 1887."]

CHAPTER II.

RAILROAD CORPORATIONS.

SECTION
2663. Election of directors.
2664. May borrow money and issue bonds.
2665. Sinking fund.
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2674. Checks to be affixed to baggage.
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Election of directors.

SECTION 2663. Directors of railroad corporations may be elected at a meeting of the stockholders other than the annual meeting, as a majority of the fixed capital stock may determined, or as the by-laws may provide; notice thereof to be given as provided for notices of meetings to adopt by-laws in chapter I of this Title.

May borrow money and issue bonds.

SEC. 2664. Railroad corporations may borrow, on the credit of the corporation, and under such regulations and restrictions as the directors thereof may impose, such sums of money as may be necessary for constructing and completing their railroad, and may issue and dispose of bonds or promissory notes therefor, in denominations of not less than five hundred dollars, and at a rate of interest not exceeding ten per cent per annum, and may also issue bonds or promissory notes, of the same denomination and rate of interest, in payment of any debts or contracts for constructing and completing their road, with its equipments and all else relative thereto. The amount of bonds or promissory notes issued for such purposes must not exceed, in all, the amount of their capital stock; and to secure the payment of such bonds or notes, they may mortgage their corporate property and franchise.

Sinking fund.

SEC. 2665. The directors must provide a sinking fund, to be specially applied to the redemption of such bonds on or before their maturity, and may also confer on any holder of any bond or note issued, for money borrowed or in payment of any debt or contract for the construction and equipment of such road, the right to convert the principal due or owing thereon into stock of such corporation, at any time within eight years from the date of such bonds, under such regulations as the directors may adopt.

Enumeration of powers.

SEC. 2666. Every railroad corporation has power:

Location of route.

First. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents, and employes may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto;

Accept real estate.

Second. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;

Acquire real estate.

Third. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and their property as may be necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

Fourth. To lay out its road, not exceeding nine rods wide, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same; *Provided,* That any such railroad corporation may take and hold any right of way or other property, of whatever width or extent that it may acquire under the laws of Congress; Lay out road, width of.

Fifth. To construct its road across, along or upon any stream of water, water course, navigable stream, street, avenue or highway, or across any railway, canal, ditch or flume which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation must restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch or flume thus intersected to its former state of usefulness as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise; Construct road, where.

Sixth. To cross, intersect, join or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, must unite with the owners of such new railroad in forming such new intersections and connections, and grant facilities therefor. And if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections and connections, the same must be ascertained and determined as is provided in the Code of Civil Procedure; May cross or connect roads.

Seventh. To purchase lands, timber, stone, gravel or other materials to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in the Code of Civil Procedure for the condemnation of lands; and to change the line of its road in whole or in part whenever a majority of the directors so determine, as is provided hereinafter, but no such change must vary the general route of such road as contemplated in its articles of incorporation; May purchase materials.

Eighth. To carry persons and property on their railroad and receive tolls or compensation therefor; Carry persons and freight.

Ninth. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business; Erect necessary buildings.

Tenth. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change or amendment by the legislature at any time; Regulate time and toll.

Eleventh. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and em- Regulate speed and establish regulations.

ployed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

Map and profile to be filed.

SEC. 2667. Every railroad corporation in this Territory must, within a reasonable time after its road is finally located, cause to be made a map and profile thereof, and of the land acquired for the use thereof, and the boundaries of the several counties through which the road may run, and file the same in the office of the Secretary of the Territory; and also like maps of the parts thereof located in different counties, and file the same in the office of the Recorder of the county in which such parts of the road are, there to remain of record forever. The maps and profiles must be certified by the chief engineer, the acting president and secretary of such company, and copies of the same, so certified and filed, be kept in the office of the secretary of the corporation, subject to examination by all parties interested.

Change of line of road.

SEC. 2668. If, at any time after the location of the line of the railroad and the filing of the maps and profiles thereof, as provided in the preceding section, it appears that the location can be improved, the directors may, as provided in subdivision 7, section 2666, alter or change the same, and cause new maps and profiles to be filed, showing such changes, in the same offices where the originals are on file, and may proceed, in the same manner as the original location was acquired, to acquire and take possession of such new line, and must sell or relinquish the lands owned by them for the original location, within five years after such change. No new location as herein provided, must be run so as to avoid any points named in their articles of incorporation.

Time for construction.

SEC. 2669. Every railroad corporation must, within two years after filing its original articles of incorporation, begin the construction of its road and must every year thereafter complete and put in full operation at least five miles of its road, until the same is fully completed; and upon its failure so to do, for the period of one year, its right to extend its road beyond the point then completed is forfeited.

Crossings and intersections.

SEC. 2670. Whenever the track of one railroad intersects or crosses the track of another railroad, whether the same be a street railroad, wholly within the limits of a city or town, or other railroad, the rails of either or each road must be so cut and adjusted as to permit the passage of the cars on each road with as little obstruction as possible; and in case the persons or corporations owning the railroads cannot agree as to the compensation to be made for cutting and adjusting the rails, the condemnation of the right of way over the one for the use of the other road may be had in proceedings under the Code of Civil Procedure, and the damages assessed and the right of way granted as in other cases.

Use of streets and alleys in city or town.

SEC. 2671. No railroad corporation must use any street, alley, or highway, or any of the land or water, within any incorporated city or town, unless the right to so use the same is granted by a two-thirds vote of town or city authority from which the right must emanate.

Crossing railroad or highways.

SEC. 2672. Whenever the track of such railroad crosses a railroad or highway, such railroad or highway may be carried under, over, or on a level with the track as may be most expedient; and in cases where an embankment or cutting necessitates a change in the line of such railroad or highway, the corporation may take such additional lands and materials as are necessary for the construction of such road or highway on such new line.

If such other necessary lands cannot be had otherwise, they may be condemned as provided in the Code of Civil Procedure; and when compensation is made therefor, the same becomes the property of the corporation.

Corporations may consolidate.

SEC. 2673. Two or more railroad corporations may consolidate their capital stock, debts, property, assets, and franchises in such manner as may be agreed upon by their respective boards of directors.

No such amalgamation or consolidation must take place without the written consent of the holders of three-fourths in value of all the stock of each corporation; and no such amalgamation or consolidation must in any way relieve any such corporation or the stockholders thereof from any and all just liabilities.

In case of such amalgamation or consolidation, due notice of the same must be given, by advertisement for one month in at least one newspaper in each county, if there be one published therein, into or through which such roads run; and when the consolidation and amalgamation is completed, a copy of the new articles of incorporation must be filed in the office of the Secretary of the Territory and in the office of the Recorder of the county where the original articles of incorporation were filed.

Checks to be affixed to baggage.

SEC. 2674. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employe of a railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare the same must be returned by the conductor in charge of the train; and on producing the check, if his baggage is not delivered to him by the agent or employe of the railroad corporation, he may recover the value thereof from the corporation.

Duties of corporation

SEC. 2675. Every such corporation must start and run their cars for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation at the place of starting, at the junction of other railroads and at siding and stopping places established for receiving and discharging way passengers and freight; and must take, transport and discharge such passengers and property at, from and to such places, on the due payment of toll, freight or fare therefor.

Damages for refusal.

SEC. 2676. In case of refusal by such corporation or their agents so to take and transport any passengers or property, or to deliver the same at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

Accomodations for passengers

SEC. 2677. Every railroad corporation must furnish on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

Printed rules and regulations.

SEC. 2678. Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, ~~unless~~ the corporation failed to comply with the provisions of the preceding section.

Fences.

SEC. 2679. Railroad corporations must make and maintain a good and sufficient fence on either or both sides of their track or property, whenever the line of their road at any time passes through or along, or abuts upon, or is contiguous to, private property, or enclosed land in the actual possession of another. Railroad corporations paying to the owner of the land through or along which their road is located, an agreed price, for making and maintaining such fence, or paying the cost of such fence with the award of damages allowed for the right of way for such railroad, are relieved and exonerated from all claims for damages arising out of the killing or maiming any animals of persons who thus fail to construct and maintain such fence; and the owners of such animals are responsible for any damages or loss which may accrue to such corporation from such animals being upon their railroad track, resulting from the nonconstruction of such fence, unless it is shown that such loss or damage occurred through the negligence or fault of the corporation, its officers, agents, or employes.

Liable for stock killed.

SEC. 2680. Every railroad company operating any line of railroad within this Territory, that maims or kills any horse, mare, gelding, filly, jack, jenny or mule, or any cow, heifer, bull, ox, steer or calf, or any other domestic animal, by running any engine or cars over or against any such animal, is liable to the owner of such animal for the damages sustained by such owner by reason thereof unless the injury occurred through the neglect or fault of the owner.

To keep book of descriptions.

SEC. 2681. Every railroad company must keep a book at a principal station in each county into or through which its road runs to be designated by the company, and a notice of the station so designated must be filed with the Recorder of the county in which the station is located; and every such company must cause to be entered in said book within fifteen days after the killing or maiming of any animal, a description as nearly as may be of such animal, its color, age, marks and brands, and keep said book subject to public inspection. Should any company fail to keep such book, or to file such notice in the manner herein provided, or to enter therein such description of any animal maimed or killed, for a period of fifteen days thereafter, such company is liable to the owner of such animal for twice the value thereof.

Carcass and hide

SEC. 2682. In case of maiming or killing of any cattle, sheep or hog, the body of the animal belongs to the company unless the owner elects within twelve hours to take the same in satisfaction or reduction of damages; the company may proceed to take care of and preserve the body of such animal; and must, unless taken by the owner, preserve the hide of all such cattle and-sheep for at least thirty days for inspection at the station house nearest to the place where such maiming or killing occurred; and for every failure so to keep any such hide for inspection, the company, in addition to the damages to the owner, forfeits one hundred dollars, to be recovered in an action in the name of the Territory in any court of competent jurisdiction, one-half to be paid into the school fund of the county and the residue to the informer.

Bell or whistle.

SEC. 2683. A bell, of at least twenty pounds weight, must be placed on each locomotive engine, and be rung at a distance of at least eighty rods from the place where the railroad crosses any street, road, or highway, and be kept ringing until it has crossed such street, road, or highway; or a steam whistle must be attached, and be sounded, except in cities, at the like distance, and be kept sounding at intervals until it has crossed the same, under a penalty of one hundred dollars for every neglect, to be paid by the corporation operating the railroad, which may be recovered in an action prosecuted by the District Attorney of the proper county, for the use of the Territory. The corporation is also liable for all damages sustained by any person, and caused by its locomotives, trains, or cars, when the provisions of this section are not complied with.

Refusing to pay fare.

SEC. 2684. If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employes of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, on stopping the train.

CHAPTER III.

BRIDGE, FERRY, FLUME, AND BOOM CORPORATIONS.

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2694. Must not take tolls until licensed.
2695. When franchise ceases.
SECTION
2696. Applies to natural persons.

Must not take tolls until licensed.

SECTION 2694. When a corporation is formed for the construction and maintenance of a bridge, ferry, flume, or boom, or for two or more of said purposes, it must not take tolls on or for the same until authority is granted therefor by the Boards of County Commissioners of the county or counties where its flume or abutments, landings or anchorages are situate. But after such authority is granted it may demand and receive such tolls as it is so authorized to take, and may, when necessary, secure the right of way for its flume, and the necessary chutes, raceways, landings, abutments, and anchorages under the provisions of the Code of Civil Procedure.

When franchise ceases.

SEC. 2695. Every such corporation ceases to be a body corporate:

First. If, within one year from filing its articles of incorporation it has not commenced the construction of its bridge, flume, or boom, as the case may be, and if within two years from such filing its bridge or boom is not completed;

Second. If, when the bridge or boom of such corporation is destroyed, it is not reconstructed and ready for use within two years thereafter;

Third. If the ferry of any such corporation is not in running order within four months after authority to take tolls thereon is obtained, or if at any time thereafter it ceases, for a like term consecutively, to perform the duties imposed by law.

Applies to natural persons.

SEC. 2696. When a bridge, ferry, flume, or boom is operated or owned by a natural person, this chapter is applicable to such person in like manner as it is applicable to corporations.

CHAPTER IV.

TELEGRAPH AND TELEPHONE CORPORATIONS.

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2702. Party guilty of willful and malicious injury.
2703. May dispose of certain rights.

May use right of way.

SECTION 2700. Telegraph and telephone corporations may construct lines of telegraph or telephone along and upon any public road or highway, along or across any of the waters or lands within this Territory, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines in such manner and at such points as not to incommode the public use of the road or highway, or interrupt the navigation of the waters.

Injuring property of.

SEC. 2701. Any person who injures or destroys, through want of proper care, any necessary or useful fixture of any telegraph or telephone corporation, is liable to the corporation for all damages sustained thereby.

Party guilty of injury.

SEC. 2702. Any person who willfully or maliciously does any injury to any telegraph or telephone property mentioned in the preceding section, is liable to the corporation for one hundred times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction.

Disposition of certain rights.

SEC. 2703. Any telegraph or telephone corporation may, at any time, with the consent of the persons holding two-thirds of the issued stock of the corporation, sell, lease, assign, transfer, or convey any rights, privileges, franchises, or property of the corporation, except its corporate franchise.

CHAPTER V.

WATER AND CANAL CORPORATIONS.

SECTION
2710. Corporations may obtain contract to supply city or town.
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2712. Right to use streets, ways, alleys and roads.
2713. To build and keep bridges in repair.

SECTION 2710. No corporation formed to supply any city or town with water must do so unless previously authorized by an ordinance of the authorities thereof, or unless it is done in conformity with a contract entered into between the city or town and the corporation. Contracts, so made are valid and binding in law, but do not take from the city or town the right to regulate the rates for water, nor must any exclusive right be granted. No contract or grant must be made for a term exceeding fifty years.

Contract for supplying city or town.

SEC. 2711. All corporations formed to supply water to cities or towns must furnish pure, fresh water to the inhabitants thereof for family uses, so long as the supply permits, at reasonable rates and without distinction of person, upon proper demand therefor; and must furnish water to the extent of their means in case of fire or other great necessity, free of charge. The rates to be charged for water must be determined by commissioners to be selected as follows:

Duties of water corporations.

Two by the city or town authorities, or when there are no city or town authorities, by the Board of Commissioners of the county, and two by the water company; and in case a majority cannot agree to the valuation, the four commissioners must choose a fifth commissioner; if they cannot agree upon a fifth, then the Probate Judge of the county must appoint such fifth person. The decision of the majority of the commissioners must determine the rates to be charged for water for one year, and until new rates are established. The Board of County Commissioners or the proper city or town authorities, may prescribe proper rules relating to the delivery of water, not inconsistent with the laws of the Territory.

Rates fixed by commissioners.

SEC. 2712. Any corporation created under the provisions of this Title for the purposes named in this chapter, subject to the reasonable direction of the Board of County Commissioners, or city or town authorities, as to the mode and manner of using such right of way, may use so much of the streets, ways and alleys in any town, city or county, or any public road therein, as may be necessary for laying pipes for conducting water into any such town or city, or through or into any part thereof.

Right to use streets, ways, alleys and roads.

SEC. 2713. Every water or canal corporation must construct and keep in good repair at all times for public use, across their canal, flume or water pipe, all of the bridges that the Board of Commissioners of the county in which such canal is situated may require, the bridges being on the lines of public highways and necessary for public uses in connection with such highways; and all water-works must be so laid and constructed as not to obstruct public highways.

To build and keep bridges in repair.

CHAPTER VI.

HOMESTEAD CORPORATIONS.

SECTION
2720. Time of corporate existence.
2721. By-laws to be furnished, etc.
2722. Advertisement and sale of delinquent and forfeited shares.
2723. May borrow and loan funds, how and for what time.
2724. Minor children, wards, and married women may own stock.

SECTION
2725. Forfeiture for speculating in or owning lands exceeding, etc.
2726. When corporation is terminated and how.
2727. Payment of premiums.
2728. Annual report to be published.
2729. Publication in certain cases.

Corporate existence, time of

SECTION 2720. Corporations organized for the purpose of acquiring lands in large tracts, paying off incumbrances thereon, improving and subdividing them into homestead lots or parcels, and distributing them among the shareholders, and for the accumulation of a fund for such purposes, are known as homestead corporations, and must not have a corporate existence for a longer period than ten years.

By-laws to be furnished, etc.

SEC. 2721. Such corporations must specify in their by-laws the times when the installments of the capital stock are payable, the amount thereof, and the fines, penalties, or forfeitures, incurred in case of default. A printed copy of the articles of incorporation and by-laws must be furnished to any shareholder on demand.

Advertisement and sale of delinquent and forfeited shares.

SEC. 2722. Whenever any shares of stock are declared forfeited by resolution of the board of directors, the directors may advertise the same for sale, giving the name of the subscriber and the number of shares by notice of not less than three weeks, published at least once a week in a newspaper of general circulation in the city, town, or county where the principal place of business of such corporation is located. Such sale must be made at auction, under the direction of the secretary of the company. The corporation may be a bidder, and the shares may be disposed of to the highest bidder for cash.

No defect, informality, or irregularity in the proceedings respecting the sale invalidates it, if notice is given as herein provided. After the sale is made, the secretary must, on receipt of the purchase money, transfer to the purchaser the shares sold, and after deducting from the proceeds of such sale all installments then due, and all expenses and charges of sale, must hold the residue subject to the order of the delinquent subscriber.

May borrow and loan. How and for what time.

SEC. 2723. Homestead corporations may borrow money for the purposes of the corporation not exceeding at any one time one-fourth of the aggregate amount of shares or parts of shares actually paid in, and the income thereof; no greater rate of interest must be paid therefor than twelve per cent per annum. For the purpose of completing the purchase of lands intended to be divided and distributed, they may borrow on the security of their shares on the land thus purchased, or that owned by the corporation at the time of procuring the loan any sum of money which, together with the interested contracted to become due thereon, will not exceed ninety per cent of the unpaid amount subscribed by the shareholders; but no loan must be made to the corporation for a term extending beyond that of its existence.

SEC. 2724. Such shares of stock in homestead corporations as may be aquired by children the cost of which, and the deposits and assessments on which are paid from the personal earnings of the children, or with gifts from persons other than their male parents, may be taken and held for them by their parents or guardians. Married women may hold such shares as they acquire with their personal earnings, or those of their children, voluntarily bestowed therefor, or from property bequeathed or given to them by persons other than their husbands.

Minor children, wards, and married women may own stock.

SEC. 2725. Homestead corporations must not purchase and sell, or otherwise acquire and dispose of real property or any interest therein, or any personal property for the sole purpose of speculation or profit. Nor must any such corporation at any one time own or hold, in trust or otherwise, for its purposes, real property or any interest therein, which in the aggregate exceeds in cash value the sum of fifty thousand dollars. For any violation of the provisions of this section, corporations forfeit their corporate rights and powers. On the application of any citizen to a court of competent jurisdiction, such forfeiture may be adjudged and the judgment carries with it cost of proceedings.

Forfeiture for speculating in or owning lands exceeding, etc.

SEC. 2726. Except for the purpose of winding up and settling its affairs, every homestead corporation must terminate at the expiration of the time fixed for its existence in the articles of incorporation, or when dissolved as provided in this Title.

When corporation is terminated, and how.

No dividend of funds must be made on termination of its corporate existence until its debts and liabilities are paid; and upon the final settlement of the affairs of the corporation, or upon the termination of its corporate existence, the directors, in such manner as they may determine, must divide its property among its shareholders in proportion to their respective interests, or upon the application of a majority in interest of the stockholders, must sell and dispose of any or all real estate of the corporation upon such terms as may be most conducive to the interests of all the stockholders, and must convey the same to the purchaser, and distribute the proceeds among the shareholders or may, at any time, when best for the interests of all the shareholders, cause the lands of the corporation to be subdivided into lots and distributed, by sale for premiums at auction or otherwise, among the shareholders.

SEC. 2727. Such premiums on lots may be made payable at the time they are bid off, and if not so paid on any lot of land, the directors may immediately offer the same for sale again. If made payable at a future day, and any shareholder fails to pay his bid on the day the same is made due and payable, the directors may advertise and sell the shares of stock representing the lots of land on which the premiums remain unpaid, in the manner provided in the bylaws for the sale of shares on account of delinquent installments and premiums.

Payment of premiums.

SEC. 2728. The actual financial condition of all homestead corporations must, by the directors thereof, be published annually in a newspaper published at the principal place of business of the corporation, for four weeks, if published in a weekly, and two weeks if published in a daily.

Annual report to be published.

The statement must be made up to the end of each year, and must be verified by the oath of the president and secretary, showing the items of property and liabilities.

Publication in certain cases.

SEC. 2729. In any case in which a publication is required, and no newspaper is published at the principal place of business, the publication may be made in a paper published at the capital of the Territory.

CHAPTER VII.

INSURANCE CORPORATIONS.

SECTION
2740. Subscriptions to capital stock.
2741. Purchase and conveyance of real estate.
2742. Policies, how issued and by whom signed.
2743. Dividends, of what, and when declared.
2744. Directors liable for loss.
2745. Capital to be all paid in twelve months.
2746. Certificate of capital stock paid up to be filed.
2747. Property which may be insured.
2748. Funds may be invested, how.
2749. Risk, limitation of.
2750. Amounts to be reserved before making dividends.
2751. Capital stock of life insurance companies.
SECTION
2752. Capital of foreign insurance companies required.
2753. Certificate to do buiness. Sworn statement. Agent upon whom service may be made.
2754. Annual statement required.
2755. Agent for foreign insurance company may act when.
2756. Fees of Treasurer. Statement and certificate to be renewed annually.
2757. Investigation by Treasurer, may revoke certificate when. Expense of investigation.
2758. Annual license. Blanks. Treasurer's reports. Charitable societies.
2759. Return of premium after loss.
2759*a*. Penalty for transacting business without certificate.

Subscriptions to capital stock.

SECTION 2740. After the certificate of incorporation of an insurance company is issued, as provided in chapter I of this Title, the directors named in the articles of incorporation must proceed in the manner specified, or in their bylaws, or if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; to levy assessments and installments thereon, and to collect the same, as in this Title provided.

Purchase and conveyance of real estate.

SEC. 2741. No insurance corporation must purchase, hold or convey real estate, except as hereinafter set forth, to wit:

First. Such as is requisite for its accommodation in the convenient transaction of its business, not exceeding in value thirty thousand dollars;

Second. Such as is conveyed to it, or to any person for it, by way of mortgage or in trust or otherwise, to secure or provide for the payment of loans previously contracted, or for moneys due;

Third. Such as is purchased at sales upon deeds of trust or judgments obtained or made for such loans or debts;

Fourth. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its dealings; all such real estate, so acquired, which is not requisite for the accommodation of such corporation in the transaction of its business, must be sold and disposed of within five years after such corporation acquired title to the same.

Policies, how issued and by whom signed.

SEC. 2742. All policies made by insurance corporations must be subscribed by the president or vice-president, or in case of the death, absence or disability of those officers, by any two of the directors, and countersigned by the secretary of the corporation. All such policies are as binding and obligatory upon the corporation as if executed over the corporate seal.

Dividends, of what and when declared.

SEC. 2743. The directors of every insurance corporation at such times as their by-laws provide, must make, declare and pay to the stockholders dividends of so much of the net profits of the corporate business and interest on capital invested, as to them appears advisable, but the moneys received and notes taken for premium on risks which are undetermined and outstanding at the time of making the dividend must not be treated as profits nor divided except as provided in this chapter.

Directors liable for loss.

SEC. 2744. If any insurance corporation is under liabilities for losses to an amount equal to its capital stock, and the president or directors, after knowing the same, make any new or further insurance, the estates of all who make such insurance or assent thereto, are severally and jointly liable for the amount of any loss which takes place under such insurance.

Capital to be all paid in twelve months.

SEC. 2745. The entire capital stock of every fire insurance corporation must be paid up in cash within twelve months from the filing of the articles of incorporation, and no policy of insurance must be issued or risk taken until twenty-five per cent of the whole capital stock is paid up.

Certificate of capital stock paid up to be filed.

SEC. 2746. The president and a majority of the directors must, within thirty days after the payment of the twenty-five per cent of the capital stock, and also within thirty days after the payment of the last installment or assessment of the capital stock limited and fixed, prepare, subscribe and swear to a certificate setting forth the amount of the fixed capital and the amount thereof paid up at the times respectively in this section named, and file the same in the office of the County Recorder of the county where the principal place of business of the corporation is located.

Property which may be insured.

SEC. 2747. Every corporation formed for fire insurance may make insurance on all insurable interests within the scope of its articles of incorporation, and may cause itself to be re-insured.

Funds may be invested, how.

SEC. 2748. Every fire insurance corporation may, by its board of directors or as the by-laws direct, invest its funds in loans upon real or personal property, or in the purchase of stocks, bonds or other securities, but no loan must be made on the stock of the corporation as security.

Risk, limitation of.

SEC. 2749. Fire insurance corporations must never take on any one risk, a sum exceeding one-tenth part of their capital actually paid in and intact at the time of taking such risk, without re-insuring the excess above one-tenth.

Amounts to be reserved before making dividends.

SEC. 2750. No corporation transacting fire insurance business under the laws of this Territory, must make any dividends except from profits remaining on hand after retaining unimpaired:

First. The entire subscribed capital stock;

Second. All the premiums received or receivable on outstanding risks;

Third. A sum sufficient to pay all losses reported or in the course of settlement, and all liabilities for expenses and taxes.

Capital stock of life insurance companies.

SEC. 2751. Every corporation formed for the purpose of mutual insurance on the lives or health of persons, or against accidents to persons for life or for any fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than one hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as a corporation until its capital stock is fully paid up in cash.

Capital of foreign insurance companies required.

SEC. 2752. (Sec. 2.) That it shall be unlawful for any fire or life insurance company, association, corporation or partnership, incorporated by or under, or organized pursuant to the laws of any foreign government, or any State or Territory of the United States, or any person or persons, directly or indirectly to take any risks or transact any business of fire or life insurance in this Territory, unless possessed of an actual paid up capital of not less than one hundred thousand ($100,000.00) dollars.

Certificate to do business.

SEC. 2753. (Sec. 3.) It shall be unlawful for any agent of any fire or life insurance company to transact the business of fire or life insurance within this Territory, unless the insurance company shall have first obtained a certificate of authority from the Treasurer of the Territory; which certificate shall be issued to any agent of such company, whenever the said company shall have filed with the Treasurer of the Territory a statement sworn to by the secretary, president or manager of said company, showing,

Sworn statement of company.

Agent upon whom service may be made.

First. The name and locality of the company.

Second. The amount of capital stock.

Third. The capital paid up.

Fourth. The amount of its assets and liabilities.

Fifth. Net surplus over all liabilities.

Sixth. The name of the attorney or agent for the Territory, who shall be a resident thereof, upon whom service of civil process, in any civil action against said company, may be made.

Seventh. Receipts and expenditures during the preceding year.

Annual statement required.

SEC. 2754. (Sec. 4.) The statement referred to in section 3 of this act shall be renewed annually, in April of each year. The first statement may be made at any time.

May issue, when.

SEC. 2755. (Sec. 5.) It shall be lawful for the agent of any company or companies, which have complied with the provisions of this act, to procure insurance through such companies.

Fees of treasurer.

SEC. 2756. (Sec. 6.) The Treasurer of the Territory shall be entitled to the following fees:

For filing statements, one (1) dollar each;

For issuing certificates, two (2) dollars each;

Statements and certificates renewed annually.

Each certificate shall be renewed upon filing each annual statement, and each certificate shall expire upon the last day of April of each and every year.

Investigation by treasurer.

SEC. 2757. (Sec. 7.) Upon the written representation of three (3) citizens who are insured in the company complained of, or upon belief of the Treasurer that any company doing insurance business in this Territory has less than one hundred thousand ($100,000) dollars paid up, unimpaired cash capital, it shall be the duty of the Treasurer to make such investigation or require such proof as shall be satisfactory to him concerning the financial condition of such company; *Provided, however,* the certificate of the insurance officer of any State having an insurance department, that such company has a paid up, unimpaired cash capital equal to one hundred thousand ($100,000) dollars shall be accepted by said Treasurer as satisfactory.

Certificate revoked, when. If such company does not within sixty (60) days after demand by the Treasurer, produce such certificate, the Treasurer shall revoke his certificate of authority to such company to do business in this Territory, and in the meantime may withdraw or withhold his certificate of authority until such certificate is produced.

Expenses of investigation. Such company shall pay the expense of such investigation, and upon refusal so to do, the certificate of authority may be withdrawn by the Treasurer.

Annual license. SEC. 2758. (Sec. 8.) The Treasurer shall collect from each company transacting an insurance business in this Territory, an annual license of fifty ($50) dollars payable at the time of filing the first statement, and annually thereafter, at the time of filing the statement in April of each year, and before he shall issue his certificate of authority. **Blank.** Blank licenses shall be issued and signed by the Controller of the Territory to the Treasurer from time to time as required, and charged to him. **Treasurer's reports.** The Treasurer shall make monthly reports on the first of each month to the Controller, of the number of licenses issued by him. The money derived from the sale of licenses under this act shall be paid into the general fund.

Charitable societies. *Provided, however,* That nothing contained in this act shall be construed to apply to any charitable secret society, or to prevent the same from issuing benefits to its own members.

Loss, return of premium. SEC. 2759. (Sec. 9.) In the event of the destruction of any insured property, on which the amount of the appraised or agreed loss shall be less than the total amount insured thereon, the insuring company or companies shall return to the insured, the insurance premium for the excess of the insurance over the appraised or agreed loss, to be paid at the same time and in the same manner as the loss shall be paid.

Penalty for transacting business without certificate. SEC. 2759*a*. (Sec. 10.) Any person or agent transacting an insurance business without the certificate herein required, or after such certificate shall have been withdrawn or revoked, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding one hundred ($100.00) dollars, or imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

["Act of Jan. 26, 1887, in effect immediately."]

CHAPTER VIII.

RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

SECTION
2760. Corporations for purposes other than profit, how formed.
2761. Additional facts articles of incorporation to set out.
2762. Corporations to hold property.
2763. How much land certain societies may hold.
2764. Corporations, by order of district court, may mortgage or sell real estate.
2765. What may be provided for in their by-laws, etc.
2766. Mutual relief associations.

Corporations for purposes other than for profit, how formed.

SECTION 2760. Any number of persons associated together for any purpose, where pecuniary profit is not their object, may, in accordance with the rules, regulations or discipline of such association, elect directors, the number thereof to be not less than three nor more than eleven, and may incorporate themselves as provided in this Title.

Additional facts set out.

SEC. 2761. In addition to the requirements of chapter I, the articles of incorporation of any such association must set forth the holding of the election for directors, the time and place where the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof; which facts must be verified by the officers conducting the election.

Corporation to hold property.

SEC. 2762. All such corporations may hold all the property of the association owned prior to incorporation or acquired thereafter in any manner, and transact all business relative thereto; but no such corporation must own or hold more real estate than may be necessary for the business and objects of the association.

How much land certain societies may hold.

SEC. 2763. In addition to that provided for in the preceding section, Masons, Odd Fellows, and Pioneer incorporated associations may hold such real estate as may be necessary to carry out their charitable purposes, or for the establishment and endowment of institutions of learning connected therewith.

Corporations, by order of district court, may mortgage or sell real estate.

SEC. 2764. Corporations of the character mentioned in this chapter, may mortgage or sell real property held by them upon obtaining an order for that purpose from the District Court held in the county in which the property is situated. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to mortgage or sell has been given by publication in such manner and for such time as the court or Judge has directed, and that it is for the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation may oppose the granting the order of it by affidavit or otherwise.

What may be provided for in by-laws, etc.

SEC. 2765. Corporations organized for purposes other than for profit may in their by-laws, ordinances constitutions, or articles of incorporation, in addition to the provisions in Chapter I, provide for:

First. The qualifications of members, mode of election, and terms of admission to membership;

Second. The fees of admission and dues to be paid to their treasury by members;

Third. The expulsion and suspension of members for misconduct or non-payment of dues; also, for restoration to membership;

Fourth. Contracting, securing, paying, and limiting the amount of their indebtedness;

Fifth. Other regulations not repugnant to the laws of the Territory and consonant with the objects of the corporation.

SEC. 2766. Associations may be formed for the purpose of paying to the nominee of any member, a sum upon the death of said member not exceeding three dollars for each member of such association. No such association must exceed in number one thousand persons. It may, upon the death of each member, levy an assessment upon each member living at the time of the death, not exceeding three dollars for each member, and collect the same, and pay the same to the nominee of such deceased; and may also provide the payment of such annual payments of members as may be deemed best. Such annual assessment upon any one member not to be raised above the annual assessment established at the time such member joined such association. Such association, by its name, may sue and be sued, and may loan such funds as it may have on hand, and may own sufficient real estate for its business purposes, and such other real estate as it may be necessary to purchase on foreclosure of its mortgages; *Provided,* Such real estate so obtained through foreclosure shall be sold and conveyed within five years from the day title is obtained, unless the District Court of the proper district shall, upon petition and good cause shown, extend the time. **Mutual relief associations.**

CHAPTER IX.

AGRICULTURAL FAIR CORPORATIONS.

SECTION
2775. May acquire and hold real estate, how much.
2776. Must not contract debts or liabilities exceeding amount in treasury.
2777. Not for profit.
2778. Aid from the county.

SECTION 2775. Agricultural fair corporations may purchase, hold, or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease, or otherwise dispose of the same, at pleasure. This real estate must be held for the purpose of erecting buildings and other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactories, stock raising, and general domestic industry. **May acquire and hold real estate, how much.**

SEC. 2776. Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract, except for the purchase of real property, for which they may create a debt not exceeding five thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section. **Must not contract debts or liabilities exceeding amount in treasury.**

SEC. 2777. Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to exhibitors and fees for **Not for profit.**

membership, which charges, together with the term of membership and the mode of acquiring the same, must be provided for in their by-laws. Such fees must never be greater than to raise sufficient revenue to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs.

Aid from the county.

SEC. 2778. (Sec. 1.) The Boards of County Commissioners of any county in this Territory, in which there is a regularly organized agricultural fair association, or any other corporation or company having for its object the exhibition of live stock and agricultural products of their county, or of the Territory, may, in their discretion, appropriate annually out of the county treasury, any sum not to exceed five hundred dollars, to be paid to the trustees or managers of such association, to assist in defraying the expenses of such fair. But no appropriation can be made in any year in which a fair is not held, nor can any appropriation be made to more than one such association in any one year. Appropriations made under this act shall be paid out of the County General Fund.

[Act of Feb. 10, 1887. "In effect immediately."]

CHAPTER X.

GAS CORPORATIONS.

SECTION
2787. Corporations to obtain privilege from city or town.
2788. Gas to be supplied on written application.
2789. When corporations may refuse to supply gas.
SECTION
2790. Agents of corporations may inspect meters.
2791. When persons neglect to pay, gas may be shut off.

Must obtain privilege from city or town.

SECTION 2787. No corporation hereafter formed must supply any city or town with gas, or lay down mains or pipes for that purpose in the streets or alleys thereof, without permission from the city or town authorities.

Gas to be supplied on written application

SEC. 2788. Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any main of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas as required for such building or premises, and can not refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas required, it must pay to the applicant the sum of fifty dollars as liquidated damages, and five dollars a day as liquidated damages, for every day such refusal or neglect continues thereafter.

When corporations may refuse to supply gas

SEC. 2789. No corporation is required to lay service pipe where serious obstacles exist to laying it, unless the applicant, if required, deposits in advance, with the corporation a sum of money sufficient to pay the cost of laying such service pipe, or his proportion thereof.

Agent of corporation may inspect meters.

SEC. 2790. Any agent of a gas corporation exhibiting written authority, signed by the president or secretary thereof for such purpose, may enter any building or premises lighted with gas supplied by such corporation, to inspect the gas meters therein, to ascertain the quantity of gas supplied or consumed. Every owner or occupant of such buildings who hinders or prevents such entry or inspection must pay to the corporation the sum of fifty dollars as liquidated damages.

Gas may be shut off, when.

SEC. 2791. All gas corporations may shut off the supply of gas from any person who neglects or refuses to pay for the gas supplied, or the rent for any meter, pipes, or fittings provided by the corporation as required by his contract; and for the purpose of shutting off the gas in such case any employe of the corporation may enter the building or premises of such person, between the hours of eight o'clock in the forenoon and six in the afternoon of any day, and remove therefrom any property of the corporation used in supplying gas.

CHAPTER XI.

LAND AND BUILDING CORPORATIONS.

SECTION
2796. How organized.
2797. May borrow money.
2798. Powers and object of the corporation.
2799. May insure the lives of its members and debtors.
2800. What real estate may be owned at any one time.

SECTION
2801. What the by-laws may provide.
2802. Secretary must make annual statement and publish same.
2803. Liability of shareholders for debts.
2804. Consolidation and transfer of corporation business and property.
2805. Married women and minors.

How organized.

SECTION 2796. Corporations organized for the erection of buildings and making other improvements on real property, may raise funds in shares not exceeding two hundred dollars each, payable in periodical installments. Such bodies are known as land and building corporations, and may be organized with or without a capital stock.

May borrow money.

SEC. 2797. Any such corporation may borrow money for the purpose of carrying out its objects, and may give as security therefor its shares or mortgages upon its real estate.

Powers and object of.

SEC. 2798. Any such corporation may purchase real estate and erect buildings for its members, and make loans to its members for the purpose of aiding them in acquiring and improving real estate. Such loan must in all cases be secured on such real estate.

May insure the lives of members and debtors.

SEC. 2799. Such corporation may insure, in some life insurance company, the lives of its members and debtors. In case of the death of a debtor or member so insured, the amount recovered on the policy, must be applied to extinguish the indebtedness, including the premium paid, and the residue, if any, must be paid to the legal representative of the decendent.

What real estate may be owned at any one time.

SEC. 2800. Any such corporation may purchase, hold, and convey real estate, as follows:

First. The lot and building in which the business of the corporation is carried on, the cost of which must not exceed twenty thousand dollars;

Second. Such as may, from time to time, be necessary to supply the wants of members, the cost of which held unalloted to the members thereof at any one time, must not exceed the sum of fifty thousand dollars;

Third. Such as have been mortgaged, pledged, or conveyed to it in trust, to secure money loaned or to secure the purchase price thereof in pursuance of the regular business of the corporation.

What the by-laws may provide.

SEC. 2801. The by-laws of such corporations must specify the amount of the periodical subscriptions or payments to be made by each member, the time and manner in which such payments are to be made; the fines and forfeitures for default; the time and manner of election of directors and other officers, and their terms of office; the manner in which the real estate may be distributed, allotted or sold to its members; the terms and conditions upon which loans may be made to its members, and by them repaid to the corporation; the manner in which a person may become, and cease to be a member; the conditions on which members may withdraw from the corporation, and the provisions for the payment to withdrawing members of the sums of money due them, arising from subscriptions or payments, and the proportion of the profits such withdrawing members may receive on withdrawal.

Secretary must make annual statement and publish same.

SEC. 2802. The secretary of any such corporation must, once in each year during the existence of the corporation, prepare a full and explicit statement of the financial affairs thereof, comprising a balance sheet, statements of receipts and expenditures, profit and loss, and assets and liabilities, which must be audited and verified by two competent persons (not directors) elected by the general body of shareholders, and be countersigned by the president and secretary. A copy of such statement must be printed and circulated among the members, and appear immediately after the annual meeting of the corporation, daily at least one week, or weekly at least four weeks, in one or more newspapers published at the place of business of the corporation.

Liability of shareholders for debts.

SEC. 2803. Every present and past member of such corporation is personally liable for such proportion of all its debts and liabilities, incurred during his membership, as the number of shares subscribed by him bears to the whole number of subscribed shares; but no past member is liable for such contribution if more than one year elapsed since he ceased to be a member before suit is commenced, nor for any debt or liability contracted after the time at which he ceased to be a member, nor unless it appears to the Court that that corporation is unable to satisfy such debts and liabilities; nor must any contribution be required from any member or past member exceeding the amount unpaid on the shares in respect to which it is liable.

Consolidation and transfer of corporation business and property.

SEC. 2804. Any two or more such corporations may unite and become incorporated in one body, with or without any dissolution or division of the funds of such corporation, or either of them; or any such corporation may transfer its engagements, funds and property to any other such corporation upon such terms as may be agreed upon by two-thirds of the members of each of such bodies present at general meetings of the members, convened for the purpose, by notice, stating the object of the meeting, sent through the post office to every member, and by general notice appearing daily, at least one week, or weekly, at least two weeks, in some newspaper published at the place of the principal business of the corporation; but no such transfer can prejudice any right of any creditor of either corporation.

Married women and minors.

SEC. 2805. Married women and minors may be admitted as members, and may take and hold shares in such corporations, and may execute all necessary instruments, and give all necessary acquittances, and sell and transfer their shares in like manner as other members.

TITLE V.

PROPERTY AND OWNERSHIP.

CHAPTER I.

GENERAL PROVISIONS.

SECTION
2825. Real property.
2826. Personal property.
2827. Who may own property.
2828. What interests are in common.
2829. Community property.
2830. Vested interest.
2831. Contingent interest.
2832. Two or more future interests.

SECTION
2833. Posthumous children.
2834. Qualities of expectant estates.
2835. Same.
2836. How long it may be suspended.
2837. Future interests, when defeated.
2838. Future interests, when not defeated.
2839. Same.

Real property.

SECTION 2825. Real property or real estate consists of:

1. Lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer;
2. That which is affixed to land;
3. That which is appurtenant to land.

Personal property.

SEC. 2826. Every kind of property that is not real is personal.

Who may own property.

SEC. 2827. Any person, whether citizen or alien, may take, hold, and dispose of property, real or personal.

Interests in common.

SEC. 2828. Every interest created in favor of several persons in their own right, is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, or unless acquired as community property.

Community property.

SEC. 2829. Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either.

Vested interests.

SEC. 2830. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the immediate or precedent interest.

Contingent interests.

SEC. 2831. A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

Two or more future interests.

SEC. 2832. Two or more future interests may be created to take effect in the alternative; so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

Posthumous children. Comp. laws, 604.

SEC. 2833. When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

Qualities of expectant estates

SEC. 2834. Future interests pass by succession, will and transfer in the same manner as present interest.

Same.

SEC. 2835. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

How long it may be suspended.

SEC. 2836. The absolute power of alienation cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case of contingent remainder in fee authorized in section two thousand eight hundred and fifty-one.

SEC. 2837. A future interest, depending on the contingency of the death of any person without successors, heirs, issue or children, is defeated by the birth of a posthumous child of such person capable of taking by succession.

Future interests when defeated.

SEC. 2838. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise.

Future interests when not defeated.

SEC. 2839. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

Same.

CHAPTER II.

ESTATES IN REAL PROPERTY.

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2850. Future estates, what.
2851. Contingent remainder in fee.
2852. Limitation of successive estates for life.
2853. Remainder upon estates for life or term of years.
2854. Remainder upon a contingency.
2855. Heirs of a tenant for life, when to take as purchasers.

SECTION
2856. Effect of power of appointment.
2857. Tenancy at will may be terminated by notice.
2858. Effect of notice.
2859. Re entry, when and how to be made.
2860. Summary proceedings in certain cases provided for.
2861. Notice not necessary before action.

SECTION 2850. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

Future estates, what.

SEC. 2851. A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

Contingent remainder in fee.

SEC. 2852. Successive estates for life can not be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

Limitation of successive estates for life.

SEC. 2853. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years, unless it is for the whole residue of such term.

Remainder upon estates for life or term of years.

SEC. 2854. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

Remainder upon a contingency.

SEC. 2855. When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in

Heirs of a tenant for life, when to take as purchasers.

the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder, so limited to them, and not as mere successors of the owner for life.

Effect of power of appointment.

SEC. 2856. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

Tenancy at will may be terminated by notice.

SEC. 2857. A tenancy or other estate at will, however created, may be terminated by the landlords giving notice in writing to the tenant, in the manner prescribed by the Code of Civil Procedure, to remove from the premises within a period of not less than one month, to be specified in the notice.

Effect of notice

SEC. 2858. After such notice has been served, and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

Re-entry, when and how made.

SEC. 2859. Whenever the right of re-entry is given to a grantor or a lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon three days' notice, as provided in the Code of Civil Procedure.

Summary proceedings.

SEC. 2860. Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in the Code of Civil Procedure.

Notice not necessary before action.

SEC. 2861. An action for the possession of real property, leased or granted, with a right of re-entry, may be maintained at any time, in the District Court, after the right to re-enter has accured, without notice.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF OWNERS.

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2875. Rights of grantees of rents and reversions.
2876. Liability of assignee of lessee.
2877. Rights of lessees and their assignees, etc.
2878. Remedy on leases for life.
2879. Rent dependent on life.
2880. Remedy of reversions, etc.
SECTION
2881. Terms of lease may be changed by notice.
2882. What fixtures tenant may remove.
2883. Boundaries, by-ways.
2884. Lateral and sub-adjacent support; right of owner to excavate.
2885. Duties of tenant for life.
2886. Monuments and fences.

Rights of grantees of rents and reversion.

SECTION 2875. A person to whom any real property is transferred or devised, upon which rent has been reserved or to whom such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had.

Liabilities of assignee of lessee.

SEC. 2876. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees except where the assigment is made by way of security for a loan, and is not accompanied by possession of the premises.

Rights of lessees and their assignees, etc.

SEC. 2877. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises.

Remedy on leases for life.

SEC. 2878. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

Rent dependent on life.

SEC. 2879. Rent dependent on the life of a person may be recovered after as well as before his death.

Remedy of reversioners, etc.

SEC. 2880. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

Terms of lease may be changed by notice.

SEC. 2881. In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

What tenures tenant may remove.

SEC. 2882. A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for the purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

Boundaries, by-ways.

SEC. 2883. An owner of land bounded by a road or street, is presumed to own to the center of the way, but the contrary may be shown.

Lateral and subjacent support, right of owner to excavate.

SEC. 2884. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjacent land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

Duties of tenant for life.

SEC. 2885. The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

Monuments and fences. Act Feb. 5. 1885.

SEC. 2886. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them;

2. The fences between them, unless one of them chooses to let his land lie without fencing, in which case, if he afterwards incloses it, he must refund to the other just proportion of the value, at that time, of any division fence made by the latter.

CHAPTER IV.

PERSONAL PROPERTY.

SECTION
2890. By what law governed.
SECTION
2891. Transfer and survivorship.

By what law governed.

SECTION 2890. If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner and is governed by the law of his domicile.

Transfer and survivorship.

SEC. 2891. A thing in action arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

TITLE VI.

TRANSFERS.

CHAPTER I.

TRANSFERS IN GENERAL.

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2900. Possibility.
2901. Right of re-entry can be transferred.
2902. Owner ousted of possession may transfer.
2903. When oral.

SECTION
2904. Grant, what.
2905. Words of inheritance unnecessary.
2906. Meaning of "heirs" and "issue" in certain remainders.
2907. Tenancy in common.

SECTION 2900. A mere possibility not coupled with an interest, cannot be transferred.

Possibility.

SEC. 2901. A right of re-entry or of re-possession for breach of condition subsequent, can be transferred.

Right of re-entry. Act Jan. 12, 1875

SEC. 2902. Any person claiming title to real property in the adverse possession of another, may transfer it with the same effect as if in actual possession.

Owner ousted of possession may transfer. Comp. laws, 602.

SEC. 2903. A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

When oral.

SEC. 2904. A transfer in writing is called a grant, or conveyance, or bill of sale.

Grant what.

SEC. 2905. Words of inheritance or succession are not requisite to transfer a fee in real property.

Inheritance, words of unnecessary. Comp. laws, 603.

SEC. 2906. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

Meaning of "heirs" and "issue," in certain remainders. Comp. laws, 604.

SEC. 2907. Every interest in real estate granted or devised to two or more persons, other than executors or trustees, as such constitutes a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

Tenancy in common. Comp. laws, 603.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

SECTION
2920. Conveyance, how made.
2921. Conveyance of homestead or residence.
2922. Conveyance by married women, how acknowledged.
2923. Same, when executed without her husband.
2924. Power of attorney of married women; acknowledgment.
2925. Attorney in fact; how must execute for principal.
2926. What easements pass with property.
2927. When fee simple is presumed to pass.
2928. Subsequently acquired title passes by operation of law.

SECTION
2929. Grant; how far conclusive on purchasers.
2930. Conveyance by owner for life or for years.
2931. Grant made on condition subsequent.
2932. Instrument to pass an estate on condition precedent only an executory contract.
2933. Conveyance of rents, reversions and remainders.
2934. Boundary by highway.
2935. Implied covenants.
2936. Incumbrances; what include.
2937. Lineal and collateral warranties abolished.

SECTION 2920. A conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Conveyance, how made. Comp. laws, Jan. 12, 1875.

SEC. 2921. No estate in the homestead of a married person, or in any part of the community property occupied as a

Conveyance of homestead or residence.

residence by a married person can be conveyed or incumbered by act of the party, unless both husband and wife join in the execution of the instrument by which it is so conveyed or incumbered, and it be acknowledged by the wife as provided in chapter III of this Title.

Conveyance by married women, acknowedgement. Comp. laws, 600.

SEC. 2922. No estate in the real property of a married woman passes by any grant or conveyance purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed in chapter III of this Title, and her husband, if a resident of the Territory, joins with her in the execution of such grant or conveyance.

Same, when executed without her husband.

SEC. 2923. If her husband has not been a *bona fide* resident of the Territory at any time within the year next preceding her conveyance, a married woman may convey her separate real property, or any interest therein, by an instrument in writing, by her subscribed, and acknowledged by her in the manner required by chapter III of this Title.

Power of attorney of married women.

SEC. 2924. A power of attorney of a married woman, authorizing the execution of an instrument transferring an estate in her separate real property, has no validity for that purpose until acknowledged by her in the manner provided in Chapter III, of this Title, and her husband, if a resident of the Territory, join therein. But if her husband has not been a *bona fide* resident of the Territory at any time within one year next preceding the execution of the power, she may execute the same alone, as in the last section provided for the execution by her of conveyances when her husband is a non-resident.

Attorney in fact, how must execute for principal.

SEC. 2925. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

What easements pass with property. N. S.

SEC. 2926. A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

When fee simple title is presumed to pass.

SEC. 2927. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

Subsequently acquired title passes by operation of law. Comp. laws, 602.

SEC. 2928. Where a person purports by proper instrument to convey or grant real property in fee simple, and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

Conveyance, how far conclusive on purchaser.

SEC. 2929. Every grant or conveyance of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer, who in good faith, and for a valuable consideration, acquires a title or lien by an instrument that is first duly recorded.

Conveyances for life or years.

SEC. 2930. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

Grant made on condition subsequent.

SEC. 2931. Where a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors by grant, duly acknowledged for record.

Instrument to pass an estate on condition precedent only an executory contract.

SEC. 2932. An instrument purporting to be a grant of real property, to take effect upon condition precedent, does not pass the estate upon the performance of the condition. Such instrument is an executory contract for the conveyance of the property.

Upon compliance with the condition, the grantee is entitled to a grant or conveyance from the grantor or his successors, for the property, duly acknowledged for record.

Grant of rents, reversions, etc.

SEC. 2933. Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, has paid rent to the grantor, must suffer any damage thereby.

Boundary by highway.

SEC. 2934. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front, to the center thereof, unless a different intent appears from the grant.

Implied covenants. Comp. laws, 604.

SEC. 2935. From the use of the word "grant" in any conveyance by which an estate of inheritance, possessory right, or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee;
2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered, by the grantor, or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Incumbrances, what include.

SEC. 2936. The term "incumbrances" includes taxes, assessments, and all liens upon real property.

Lineal and collateral warranties abolished. Comp. laws, 604.

SEC. 2937. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

CHAPTER III.

ACKNOWLEDGMENTS.

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2950. By whom acknowledgments may be taken in this Territory.
2951. Same.
2952. By whom taken without the Territory.
2953. By whom taken without the United States.
2954. Deputy can take acknowledgment.
2955. Requisites for acknowledgments.
2956. Acknowledgment by married women.
2957. Officer must endorse certificate.
2958. General form of certificate.
2959. Form of acknowledgment by corporation.
2960. Form of certificate of acknowledgment by married women.
2961. Form of certificate of acknowledgment by attorney in fact.
2962. Officers must affix their signatures.
2963. Certificate of authority of justices in certain cases.
SECTION
2964. Proof of execution, how made.
2965. Witness must be personally known to officer.
3966. Witness must prove, what.
2967. Handwriting may be proved, when.
2968. Evidence must prove, what.
2969. Certificate of proof.
2970. Officers authorized to do certain things.
2971. When instrument is improperly certified, party may have action to correct error.
2972. In certain cases, parties interested may obtain judgment of proof of an instrument.
2973. Effect of judgment in such action.
2974. Conveyances heretofore made to be governed by then existing laws.
2975. Recording, and as evidence, to be governed by then existing laws.
2976. Records, what notice deemed from.

Acknowledgments taken, by whom.

SECTION 2950. The proof or acknowledgment of an instrument may be made at any place within this Territory, before a Justice or Clerk of the Supreme Court.

Same.
8 ses., 597.

SEC. 2951. The proof or acknowledgment of an instrument may be made in this Territory within the city, county or district for which the officer was elected or appointed, before either:

1. A Judge or Clerk of a Court record; or,
2. A County Recorder; or,
3. A Notary Public; or,
4. A Justice of the Peace.

By whom taken without the Territory.
Comp. laws. 597.

SEC. 2952. The proof or acknowledgment of an instrument may be made without this Territory, but within the United States, and within the jurisdiction of the officer, before either:

1. A Justice, Judge or Clerk of any Court of Record of the United States; or,
2. A Justice, Judge or Clerk of any Court of Record of any State or Territory; or,
3. A Commissioner appointed by the Governor of this Territory for that purpose; or,
4. A Notary Public; or,
5. Any other officer of the State or Territory where the acknowledgment is made authorized by its laws to take such proof or acknowledgment.

By whom taken without the United States.

SEC. 2953. The proof or acknowledgment of an instrument may be made without the United States, before either:

1. A Minister, Commissioner or Charge d'Affairs of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,
2. A Consul or Vice-Consul of the United States resident in the country where the proof or acknowledgment is made; or,
3. A Judge of a Court of Record of the county where the proof or acknowledgment is made; or
4. Commissioners appointed for such purposes by the Governor of the Territory pursuant to statute; or
5. A Notary Public.

Deputy can take acknowledgment.

SEC. 2954. When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

Requisites for acknowledgments. Comp. laws, 597.

SEC. 2955. The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in, and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

Acknowledgment by married women. Comp. laws, 600.

SEC. 2956. The acknowledgment of a married woman to an instrument purporting to be executed by her, must not be taken, unless she is made acquainted by the officer with the contents of the instrument on an examination without the hearing of her husband; nor certified, unless she thereupon acknowledges to the officer that she executed the instrument, and that she does not wish to retract such execution.

Officer must indorse certificate.

SEC. 2957. An officer taking the acknowledgment of an instrument must endorse thereon a certificate substantially in the forms hereinafter prescribed.

General form of certificate. Comp. laws, 598.

SEC. 2958. The certificate of acknowledgment, unless it is otherwise in this chapter provided, must be substantially in the following form:

Territory of Idaho, } ss.
County of——— }

On this——day of————, in the year of———, before me (here insert the name and quality of the officer), personally appeared————known to me (or proved to me on the oath of ————), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

Form of acknowledgment by corporation.

SEC. 2959. The certificate of acknowledgment of an instrument executed by a corporation, must be substantially in the following form:

Territory of Idaho, } ss.
County of——— }

On this——day of————, in the year———, before me (here insert the name and quality of the officer,) personally appeared————, known to me (or proved to me on the oath of——————) to be the president (or the secretary) of the corporation that executed the instrument and acknowledged to me that such corporation executed the same.

Form of certificate of acknowledgment by married women. Comp. laws, 600.

SEC. 2960. The certificate of acknowledgment by a married woman must be substantially in the following form:

Territory of Idaho, } ss.
County of——— }

On this——day of————, in the year of ———, before me (here insert the name and quality of the officer), personally appeared————, known to me (or proved to me on the oath of————) to be the person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same and that she does not wish to retract such execution.

Form of certificate of acknowledgment by attorney in fact. Comp. laws, 601.

SEC. 2961. The certificate of acknowledgment by an attorney in fact, must be substantially in the following form:

Territory of Idaho, } ss.
County of——— }

On this ——— day of ————, in the year ———, before me, (here insert the name and quality of the officer) personally appeared ——————————, known to me (or proved to me on the oath of ——————————) to be the person whose name is subscribed to the within instrument as the attorney in fact of —————————, and acknowledged to me that he subscribed the name of ————————— thereto as principal, and his own name as attorney in fact.

Officers must affix signatures. Comp. laws, 597.

SEC. 2962. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

Certificate of authority of justices in certain cases.

SEC. 2963. The certificate of proof or acknowledgment, if made before a Justice of the Peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the Recorder of the county in which the Justice resides, setting forth that such Justice, at the time of taking such proof or acknowlment, was authorized to take the same, and that the Recorder is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

Proof of execution, how made. Comp. laws. 598.

SEC. 2964. Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the party executing it, or either of them; or,
2. By a subscribing witness; or,
3. By other witnesses in the cases hereinafter mentioned.

Witness must be personally known to officer. Comp. laws, 598.

SEC. 2965. If by a subscribing witness, such witness must be personally known to the officer taking the proof, to be the person whose name is subscribed to the instrument, as a witness, or must be proved to be such, by the oath of a creditable witness.

Witness must prove, what. Comp. laws, 598.

SEC. 2966. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party, is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

When handwriting may be proved. Comp laws. 598-599.

SEC. 2967. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,
2. When the parties and all the subscribing witnesses are non-residents of the Territory; or,
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,
4. When the subscribing witness conceals himself or can-

not be found by the officer, by the exercise of due diligence, in attempting to serve the subpœna or attachment; or,

5. In case of the continued failure or refusal of the witness to testify for the space of one hour, after his appearance.

SEC. 2968. The evidence taken under the preceding section, must satisfactorily prove to the officer the following facts:

Evidence must prove, what. Comp. laws, 599.

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness; and is well acquainted with his signature, and that it is genuine; and,
4. The place of residence of the witness.

SEC. 2969. An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

Certificate of proof. Comp. laws, 598.

SEC. 2970. Officers authorized to take the proof of instruments, are authorized in such proceedings:

Officers authorized to do certain things. Comp. laws, 599.

1. To administer oaths or affirmation, as prescribed in the Code of Civil Procedure;
2. To employ and swear interpreters;
3. To issue subpœna, as prescribed in the Code of Civil Procedure;
4. To punish for contempt as prescribed in the Code of Civil Procedure.

The civil damages and forfeiture to the party aggrieved are prescribed in the Code of Civil Procedure for a witness disobeying a subpœna.

SEC. 2971. When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the District Court to obtain a judgment correcting the certificate.

Instrument improperly certified. party may have, what.

SEC. 2972. Any person interested under an instrument entitled to be proved for record, may institute an action in the District Court against the proper parties to obtain a judgment proving such instrument.

Parties may obtain judgment, etc.

SEC. 2973. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with like effect as if acknowledged.

Effect of judgment.

SEC. 2974. The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this Code goes into effect, executed. acknowledged, proved, or recorded is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

Conveyances governed by existing laws.

Recording, etc. Comp. laws, 605.

SEC. 2975. All conveyances of real property made before this Code goes into effect, and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with like effect, as conveyances executed and acknowledged in pursuance of this chapter.

Records, what notice deemed from.

SEC. 2976. Any instrument affecting real property, which previous to the time this Code takes effect, is copied into the proper book of record, kept in the office of any County Recorder; imparts notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein affects the rights of previous purchasers or incumbrancers. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded, provided it be first shown that the original instrument was genuine.

Certified copies as evidence.

CHAPTER IV.

RECORDING TRANSFERS.

SECTION
2990. What may be recorded.
2991. Judgments may be recorded without acknowledgment.
2992. Letters patent may be recorded without acknowledgment.
2993. Notices of location.
2994. Instruments must be acknowledged, except, etc.
2995. Instruments executed under power of attorney.
2996. Fees of recorder to be endorsed.

SECTION
2997. In what office.
2998. Instrument, when deemed recorded.
2999. Books of record.
3000. Record, where and to whom notice.
3001. Conveyances to be recorded, or are void, etc.
3002. Conveyance defined.
3003. Powers of attorney, how revoked.
3004. Unrecorded instrument valid.

What may be recorded.

SECTION 2990. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

Judgments may be recorded without acknowledgment.

SEC. 2991. Judgments affecting the title to or possession of real property, authenticated by the certificate of the Clerk of the Court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

Letters patent.

SEC. 2992. Letters patent from the United States executed and authenticated pursuant to existing law, may be recorded without further proof.

Notice of location may be recorded without acknowledgment.

SEC. 2993. Certificates and notices of location authorized by law with the affidavits attached may be recorded without acknowledgment or further proof.

Instruments must be acknowledged, except, etc.

SEC. 2994. Before an instrument may be recorded, unless it is otherwise expressly provided, its execution must be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary, or proved, and the acknowledgment or proof certified in the manner prescribed by chapter III of this Title.

When instrument not recorded.

SEC. 2995. An instrument executed by an attorney in fact must not be recorded until the power of attorney authorizing the execution of the instrument is filed for record in the same office.

SEC. 2996. The Recorder must in all cases endorse the amount of his fee on the instrument recorded, and on the record thereof.

Fees of recorder to indorsed.

SEC. 2997. Instruments entitled to be recorded must be recorded by the County Recorder of the county in which the real property affected thereby is situated.

In what office.

SEC. 2998. An instrument is deemed to be recorded when, being duly acknowledged, or proved and certified, it is deposited in the Recorder's office with the proper officer for record.

Instrument when deemed recorded.

SEC. 2999. Grants and conveyances absolute in terms, are to be recorded in one set of books, and mortgages in another.

Books of record.

SEC. 3000. Every conveyance of real property, acknowledged or proved, and certified, and recorded as prescribed by law, from the time it is filed with the Recorder for record, is constructive notice of the contents thereof to subsequent purchaser and mortgagees.

Record, when and to whom notice. Comp. Laws, 601.

SEC. 3001. Every conveyance of real property other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Conveyances to be recorded. Comp. laws, 601.

SEC. 3002. The term "conveyance" as used in this chapter, embraces every instrument in writing by which any estate or interest in real property is created, alienated, mortgaged or incumbered, or by which the title to any real property may be affected, except wills.

Conveyance defined. Comp. laws, 602.

SEC. 3003. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded.

Powers of attorney, how revoked. Comp. laws, 601.

SEC. 3004. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

Unrecorded instrument valid. N. S.

CHAPTER V.

UNLAWFUL TRANSFERS.

SECTION
3015. Certain instruments void against purchasers, etc.
3016. Not void against purchaser having notice, unless fraud is mutual.
3017. Power to revoke when deemed executed.
3018. Same.

SECTION
3019. Personal property, certain transfers of, void.
3020. Transfer, etc., with intent to defraud creditors.
3021. Certain transfers presumed fraudulent.
3022. Question of fraud, how determined.
3023. As to purchasers.

SECTION 3015. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value of the same property, or the rents or profits thereof.

Certain instruments void against purchasers. Act Jan. 6, 1875.

Not void against purchaser, when. Act Jan. 6, 1875.

SEC. 3016. No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made, or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended.

Power to revoke. Act Jan. 6, 1875.

SEC. 3017. Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estates, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

Same. Act Jan. 6 1875.

SEC. 3018. Where a person having a power of revocation within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

Personal property, certain transfers of void. Comp. laws, 608.

SEC. 3019. All deeds of gift, all conveyances and all transfers or assignments verbal or written, of goods, chattels or things in action, made in trust, for the use of the person making the same, are void as against the creditors existing or subsequent of such person.

Transfer, etc., with intent to defraud creditors.

SEC. 3020. Every transfer of property, or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Certain transfers presumed fraudulent.

SEC. 3021. Every transfer of personal property other than a thing in action, and every lien thereon, other than a mortgage, when allowed by law, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

Fraud, how determined.

SEC. 3022. In all cases arising under the provisions of this Title, except as otherwise provided in the last section, the question of fraudulent intent is one of fact, and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

As to purchasers. Comp. laws, 609.

SEC. 3023. The provisions of this chapter do not in any manner affect or impair the title of a purchaser for a valuable consideration, unless it appears that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

TITLE VII.

HOMESTEADS.

CHAPTER I.

GENERAL PROVISIONS.

SECTION
3035. Homestead, of what consists.
3036. From what it may be carved.
3037. From what not.
3038. Exempt from forced sale.
3039. Subject to, when.
3040. How conveyed or incumbered
3041. How abandoned.
3042. Same.
3043. Proceedings on execution against homestead.
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3045. Same.
3046. Same.
3047. Same.
SECTION
3048. Same.
3049. Same.
3050. Same.
3051. Same.
3052. Same.
3053. Same.
3054. Same.
3055. After sale, money equal to homestead exemption protected.
3056. Compensation of appraisers.
3057. Costs.
3058. Who may select homestead, value of.
3059. Head of a family defined.

SECTION 3035. The homestead consists of the dwelling house in which the claimant resides, and the land on which the same is situated, selected as in this Title provided.

Homestead, of what consists. Comp. laws, 627.

SEC. 3036. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or with the consent of the wife from her separate property. When the claimant is not married, but is the head of a family, the homestead may be selected from any of his or her property.

From what may be selected.

SEC. 3037. The homestead cannot be selected from the separate property of the wife without her consent, shown by her making the declaration of homestead.

When selected from wife's separate estate.

SEC. 3038. The homestead is exempt from execution or forced sale, except as in this Title provided.

Exempt from forced sale. Comp. laws, 627.

SEC. 3039. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

Subject to execution, when. Comp. laws, 628.

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises; or in an action in which an attachment was levied upon the premises before the filing of such declaration;
2. On debts secured by mechanic's, laborer's or vendor's liens upon the premises;
3. On debts secured by mortgages upon the premises, executed and acknowledged by the husband and wife or by an unmarried claimant;
4. On debts secured by mortgages upon the premises, executed and recorded before the declaration of homestead was filed for record.

SEC. 3040. The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

How conveyed or incumbered. Comp. laws, 628.

SEC. 3041. A homestead can be abandoned only by a declaration of abandonment, or a grant or conveyance thereof, executed and acknowledged:

How abandoned. Comp. laws, 628.

1. By the husband and wife, if the claimant is married;
2. By the claimant, if unmarried.

Same.

SEC. 3042. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

Execution against homestead, proceedings on. Comp. laws, 648.

SEC. 3043. When an execution for the enforcement of a judgment, obtained in a case not within the classes before enumerated, is levied upon the homestead, the judgment creditor may apply to the Probate Judge of the county in which the homestead is situated for the appointment of persons to appraise the value thereof.

Same. N. S.

SEC. 3044. The application must be made upon a verified petition, showing:

1. The fact that an execution has been levied upon the homestead;
2. The name of the claimant;
3. That the value of the homestead exceeds the amount of the homestead exemption.

Same. N. S.

SEC. 3045. The petition must be filed with the Clerk of the Probate Court.

Same. Comp. laws, 648.

SEC. 3046. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant, at least two days before the hearing.

Same. Comp. laws, 648.

SEC. 3047. At the hearing the Judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead.

Same.

SEC. 3048. The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

Same. Comp. laws, 628.

SEC. 3049. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

Same.

SEC. 3050. Within ten days after their appointment they must make to the Judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

Same. Comp. laws, 628.

SEC. 3051. If, from the report, it appears to the Judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

Same. Comp. laws, 628.

SEC. 3052. If, from the report it appear to the Judge that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under the execution.

Same. Comp. laws, 629.

SEC. 3053. At such sale no bid must be received, unless it exceeds the amount of the homestead exemption.

Same. Comp. laws, 629.

SEC. 3054. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant, and the balance applied to the satisfaction of the execution.

Money from execution sale, protection. Comp. laws, 629.

SEC. 3055. The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead.

SEC. 3056. The Court must fix the compensation of the appraisers, not to exceed five dollars per day each for the time actually engaged.

Compensation of appraisers. N. S.

SEC. 3057. The execution creditor must pay the costs of these proceedings in the first instance; but if the appraised value exceeds the homestead exemption the amount so paid must be added as costs on execution, and collected accordingly.

Costs.

SEC. 3058. Homesteads may be selected and claimed:

Who may select homestead, value of. Comp. laws, 627.

1. Of not exceeding five thousand dollars in value by any head of a family;
2. Of not exceeding one thousand dollars in value by any other person.

SEC. 3059. The phrase "head of a family," as used in this Title, includes within its meaning:

Head of family defined. Comp. laws, 629.

First. The husband or wife when the claimant is a married person;

Second. Every person who has residing on the premises with him or her and under his or her care and maintenance either:

(1.) His or her minor child, or the minor child of his or her deceased wife or husband;

(2.) A minor brother or sister, or the minor child of a deceased brother or sister;

(3.) A father, mother, grandfather or grandmother;

(4.) The father, mother, grandfather or grandmother of a deceased husband or wife;

(5.) An unmarried sister, or any other of the relatives mentioned in this section who have attained the age of majority, and are unable to take care of or support themselves.

CHAPTER II.

HOMESTEAD OF THE HEAD OF A FAMILY.

SECTION
3070. Mode of selection.
3071. Declaration, what to contain.
3072. Declaration must be recorded.
SECTION
3073. Homestead right, when it attaches; survivorship and succession.

SECTION 3070. In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge in the same manner as a conveyance of real property is acknowledged, a declaration of homestead, and file the same for record.

Mode of selection. Comp. laws, 627.

SEC. 3071. The declaration of homestead must contain:

Declaration, what to contain. Comp. laws, 627.

1. A statement showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit;
2. A statement that the person making it is residing on the premises, and claims them as a homestead;
3. A description of the premises;
4. An estimate of their actual cash value.

SEC. 3072. The declaration must be recorded in the office of the Recorder of the county in which the land is situated.

Declaration must be recorded. Comp. laws, 627.

Homestead right, when it attaches. Comp. laws, 629.

SEC. 3073. From and after the time the declaration is filed for record, the premises therein described, constitute a homestead. If the selection was made by a married person from the community property; the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this Title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the Probate Court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this Title.

Survivorship and succession.

CHAPTER III.

HOMESTEAD OF OTHER PERSONS.

SECTION
3085. Mode of selection.
3086. Declaration of homestead.
3087. Declaration must be recorded.
SECTION
3088. Effect of filing for record the declaration of homestead.

Mode of selection. N. S.

SECTION 3085. Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a conveyance of real property is acknowledged, a "declaration of homestead."

Declaration of homestead. N. S.

SEC. 3086. The declaration must contain everything required by the second, third and fourth subdivisions of the section prescribing the declaration of a head of a family.

Declaration recorded. N. S.

SEC. 3087. The declaration must be recorded in the office of the County Recorder of the county in which the land is situated.

Effect of filing for record. N. S.

SEC. 3088. From and after the time the declaration is filed for record, the land described therein is a homestead.

TITLE VIII.

MINES AND MINING.

CHAPTER I.

LOCATION OF LODE MINING CLAIMS.

SECTION
3100. Width of claim.
3101. Location; notice, how placed.
3102. What to contain.
3103. When to be recorded; Deputy Recorders.
3104. Affidavit of locator.
3105. How recorded; fee.
3106. Deputy to transmit notices to County Recorder.
3107. Duties of deputy; seal.

SECTION 3100. Mining claims hereafter located upon veins or lodes of quartz, or other rock in place bearing any of the metals, or other valuable deposits mentioned in section 2320 of the Revised Statutes of the United States, may extend to three hundred feet on each side of the middle of the vein or lode; *Provided*, That when the locators have set the stakes, posts or monuments described in the next section, to indicate the line of the vein, ledge or lode, such stakes, posts or monuments must be taken for the purposes of said location, to mark correctly the line thereof, and such line must not be afterwards changed so as to affect rights acquired or interfere with any locations made subsequent thereto.

Width of claim. Act Feb. 10, 1881.

SEC. 3101. The locator of any lode mining claim must, at the time of making the location, place a substantial stake or post, not less than four inches square or in diameter, at each end of the ground claimed, and as near as practicable along the course or line of the vein or ledge, and also a similar stake or post at each corner of the location. Such stakes or posts must be at least four feet high above the surface, and must each be marked distinctly with the name of the claim. The notice of location hereinafter mentioned, must be conspicuously attached to one of said center end posts, so that the same may be easily read; or it must be conspicuously posted in like manner at the point of discovery and prospecting work on the claim, where stakes or posts cannot be conveniently had, well built monuments of stone, of the like height above the surface answer the purpose of stakes or posts, but the notice must be so placed on the side of such monument as to be readily seen.

Location. Act Feb. 10, 1881.

Notice, how placed.

SEC. 3102. The notice must contain the date of the location, the names of the locators, the name of the claim, ledge or lode, the quantity in feet claimed along the ledge or lode, the width claimed from the middle of the vein, and must also give such a description of the locality of the claim, by reference to natural land marks or fixed objects, and contiguous claims, if there be any, as to render the situation of the same reasonably certain from the letter of the notice itself.

What to contain. Act Feb. 10, 1881.

SEC. 3103. Every claim must be recorded within fifteen days from the time of the posting of the notice, in the district in which the same is situated, or at the nearest office to the claim. For the convenience of prospectors and locators, the County Recorders of the several counties must appoint

When to be recorded. Act Feb. 10, 1881.

Deputy recorders.

a deputy at any place where he may deem it necessary, and at all places more than ten miles distant from an existing office, whenever ten or more mining locators interested petition for the appointment of such deputy. Upon the failure of any Recorder to make the appointment of a deputy for ten days after a petition in writing has been presented to him, the resident miners at such district may appoint temporarily one of their number to act as Recorder of the district whose records shall be as valid as if made by a deputy, and must be entered by the Recorder as hereinafter required; *Provided,* That whenever at any time afterwards the Recorder appoints a deputy for such district or place, the authority of the person elected by the resident miners ceases.

Affidavit of locator. 13 ses., 138.

SEC. 3104. At the time of presenting a notice of location for record, or within five days thereafter, one of the locators named in the same, must make and subscribe an affidavit in writing, on or attached to the notice, substantially in the following form, to wit:

Territory of Idaho, } ss.
County of ——— }

I, ———————, do solemnly swear that I am acquainted with the mining ground described in the notice of location herewith, called the ————— ledge, lode, or claim, and that the ground and claim therein described, or any part thereof, has not, to the best of my knowledge and belief been heretofore located according to the laws of the United States and of this Territory, or if so located, that the same has been abandoned or forfeited by reason of the failure of such former locators to comply, in respect thereto, with the requirements of said laws.

Subscribed and sworn to before me, this —— day of ———, A. D. 18—. A. B.

How recorded, fee. 13 ses., 138.

SEC. 3105. The notice herein required to be recorded, is a copy of the notice placed upon the claim, or substantially a copy of the same. It must be recorded by the deputy appointed for the district, or the person elected for that purpose as above provided (when the legal fee therefor is tendered) in a book, to be kept for that purpose. Said book must be indexed, with the names of all locators arranged in alphabetical order, according to the first letter of the family or surname of each. The fee to be tendered for making such record, administering the oath to the locator and certifying the same for indexing the names appearing upon the notice, and to include the recording of the notice by the Recorder, as hereinafter required, and the indexing by said Recorder is two dollars, which fee must be equally divided between the Recorder and the deputy, or person acting under an election as hereinabove provided, and no other or additional sum of money must be demanded or received by either of them for any services connected with the recording of any notice of location made pursuant to the requirements of this chapter.

Deputy to transmit notices to county recorder. Act Feb. 10, 1881.

SEC. 3106. The Deputy Recorder of mining claims of each district, or the person elected, as hereinabove provided, to make the record in case of the failure of the Recorder to appoint a deputy, must at least once in each month, transmit to the Recorder, at the county seat, all the notices of location filed with him for record and not previously transmitted, which must at once be recorded by said Recorder, in a book to be kept in his office, and be known as the "Book of Mining Claims." The names of all persons appearing in every notice of location must be indexed by the Recorder, said names being arranged in said index in alphabetical order, according to the first letter of the surname of said locators.

Duties of deputy, seal. Act Feb. 10, 1881.

SEC. 3107. The Deputy Recorders provided for in this chapter, are not, by virtue of the provisions hereof, authorized to perform any other than the special duties herein specified. They must keep an official seal, and the records in their custody are public records, but the seal of a Deputy Recorder must not be attached to any paper except for the purpose of authenticating certificates attached to transcripts of the records in his custody as Deputy Recorder.

CHAPTER II.

PLACER CLAIMS.

SECTION
3120. Location.
3121. Marking on the ground and notice.
SECTION
3122. Recording.

Location. N. S.

SECTION 3120. Placer claims, as mentioned in section 2329 of the Revised Statutes of the United States, may be located under like circumstances and conditions, and upon similar proceedings, as far as applicable, to those provided by chapter I, of this Title in the case of lode claims.

Marking on the ground and notice. N. S.

SEC. 3121. The locator of any placer mining claim must, at the time of making the location, place a substantial stake or monument, as required in the preceding chapter for lode claims, at each corner of the location and post on each a notice of location containing a description of the claim, the date of the locations and the name of the locator, as required in the case of a lode claim.

Recording. N. S.

SEC. 3122. The same affidavit must be attached to the notice of location of every placer claim hereafter located and the notice and affidavit must be filed for record within the time, at the place and in the manner required by chapter I of this Title in the case of lode claims; and for that purpose Deputy Recorders may be appointed as there provided.

CHAPTER III.

RIGHTS OF WAY AND EASEMENTS FOR THE DEVELOPMENT OF MINES.

SECTION
3130. Right of way.
3131. Rights of way and easements.
3132. Petition.
3133. Citation.
3134. Hearing; appointment of Commissioners.
3135. Oath, report.
SECTION
3136. Report, when set aside.
3137. Rights upon payment or tender.
3138. Appeal.
3139. Trial on appeal.
3140. Rights pending appeal.
3141. Costs.
3142. Costs.

Right of way. Act Jan. 12, 1877.

SECTION 3130. The owner, locator, or occupant of a mining claim, whether patented under the laws of the United States or held by location or possession, may have and acquire a right of way for ingress and egress, when necessary in working such mining claim, over and across the lands or mining claims of others, whether patented or otherwise.

Rights of way and easements. Act Jan. 7, 1881.

SEC. 3131. When any mine or mining claim is so situated, that for the more convenient enjoyment of the same, a road, railroad or tramway therefrom, or a ditch or canal to convey water thereto, or a ditch, flume, cut or tunnel to drain or convey the waters or trailings therefrom, or a tunnel or shaft may be necessary for the better working thereof, which road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, may require the use or occupancy of lands or mining grounds, owned, occupied or possessed by others than the person or persons or body corporate, requiring an easement for any of the purposes described, the owner, claimant or occupant of the mine or mining claim first above mentioned, is entitled to a right-of-way, entry and possession for all the uses and privileges for such road, railroad, tramway, ditch, canal, flume, cut, shaft or tunnel, in, upon, through and across such other lands or mining claims, upon compliance with the provisions of this chapter.

Petition. 9 ses., 71.

SEC. 3132. When the owner, claimant or occupant of any mine or mining claims desires to work the same, and it is necessary to enable him to do so successfully and conveniently, that he have a right of way for any of the purposes mentioned in the foregoing sections, if such right of way cannot be acquired by agreement with the claimant or owner of the lands or claims, over, under, across or upon which he seeks to establish such right of way, he may present to the Judge of the District Court within and for the county in which such right of way or some part thereof, sought to be enforced is situated, or to which such county is attached for judicial purposes, a petition praying that such right of way be awarded to him. Such petition must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or claim of the petitioner, and the claim and lands to be affected by such right or privilege, with the names of the occupants or owners thereof. He may also set forth any tender or offer hereinafter mentioned, and demand the relief sought.

Citation. 9 ses., 71.

SEC. 3133. Upon the receipt if such petition and filing the same with the Clerk of such court, the Judge must direct a citation to be issued under the seal of such court, to the owners named in the petition, of the mining claims and lands to be affected by the proceedings requiring them, and each of them to appear before the Judge on a day therein named, which must not be less than ten days from the service thereof, and answer and show cause why such right of way should not be allowed as prayed for; such citation must be served on each of the parties in the manner prescribed by law for serving summons in ordinary proceedings at law.

Hearing, appointment of commissioners. 9 ses., 71.

SEC. 3134. Upon the return day of the citation, or upon any day to which the hearing may be adjourned, the Judge must proceed to hear the allegations and proofs of the respective parties, and if upon such hearing he is satisfied that the claims of the petitioners can only be conveniently worked by means of the privilege prayed for, he must make an order adjudging and awarding to the petitioner such right of way, and must appoint three commissioners, who must be disinterested parties and residents of the county, to assess the damages resulting to the lands or claims affected by such order.

SEC. 3135. The Commissioners so appointed must be sworn to faithfully and impartially discharge their duties, and must proceed without unreasonable delay to examine the premises and assess the damages resulting from such right or privilege prayed for, and report the amount of the same to the judge appointing them; and if such right of way affects the property of more than one person or company, such report must contain an assessment of damages to each company or person. Oath, report. 9 ses., 72.

SEC. 3136. For good cause shown, the judge may set aside the report of such commissioners and appoint three other commissioners whose duty shall be the same as above mentioned. Report, when set aside. 9 ses., 72.

SEC. 3137. Upon the payment of the sum assessed as damages as aforesaid, to the persons to whom it is awarded, or a tender thereof to them, then the person petitioning as aforesaid, is entitled to the right of way, prayed for in his petition, and may immediately proceed to occupy the same and erect thereon such works and structures, and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded. Rights upon payment or tender. 9 ses., 72.

SEC. 3138. Appeals from the assessment of damages made by the commissioners, may be made and prosecuted in the proper District Court by any party interested, at any time within ten days after the filing of the report of the Commissioners. A written notice of such appeal must be served upon the appellee in the same manner as summons are served in civil actions. The appellant must file with the Clerk of the court to which the appeal is made, a bond with sureties to be approved by the Clerk in the amount of the assessment appealed from in favor of the appellee, conditioned that the appellant will pay any costs that may be awarded to the appellee, and abide any judgment that may be rendered in the cause. Appeal. 9 ses., 72.

SEC. 3139. An appeal brings before the District Court the necessity of the right of way or easement for the successful and convenient working of the mining claim and the amount of damages; and upon such appeal the case must be tried anew, and either party is entitled to a jury. Trial on appeal. N. S.

SEC. 3140. The prosecution of an appeal does not hinder, delay or prevent the appellee from exercising all the rights and privileges granted by the award, if he files with the Clerk of the Court in which the appeal is pending, a bond with sufficient sureties to be approved by the Clerk, in double the amount of the assessment appealed from, conditioned that the appellee will pay to the appellant all damages he may sustain, and whatever amount he may recover in the action. Rights pending appeal. 9 ses., 72.

SEC. 3141. If the appellant recover judgment against the necessity of the easement, or fifty dollars more damages than the commissioners awarded, or the appellee offers to allow, the appellee must pay the costs of the appeal, otherwise the appellant must pay such costs. Costs. 9 ses., 73.

SEC. 3142. The costs and expenses of proceedings under the provisions of this chapter, except as herein other- Costs. 9 ses., 73.

wise provided, must be paid by the party making the application; *Provided,* That if the applicant before the commencement of such proceedings, has tendered to the parties owning or occupying the lands or mining claims, a sum equal to or more than the amount of damages recovered, all of the costs and expenses must be paid by the party or parties owning the lands or claims affected by such right of way, and who appeared and resisted the claim of the applicants thereto.

TITLE IX.

WATER RIGHTS AND IRRIGATION.

CHAPTER I.

WATER RIGHTS.

SECTION
3155. Rights to water may be acquired by appropriation.
3156. Appropriation must be for a useful purpose.
3157. Point of diversion may be changed.
3158. Water may be turned into natural channels.
3159. First in time, first in right.
3160. Notice of appropriation.
SECTION
3161. Diligence in appropriation.
3162. Completion defined.
3163. Doctrine of relation applied.
3164. Forfeiture.
3165. Ditches, etc., heretofore made.
3166. Rights of present claimant.
3167. Recorder to keep book in which to record notices.

Right to water, how acquired. Act Feb. 10, 1881.

SECTION 3155. The right to the use of running water flowing in a river, or stream, or down a cañon or ravine, may be acquired by appropriation.

Appropriation to be for useful purposes.

SEC. 3156. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such a purpose, the right ceases.

Point of diversion may be changed.

SEC. 3157. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe or aqueduct by which the diversion is made, to places beyond that where the first use was made.

Water may be turned into natural channels.

SEC. 3158. The water appropriated may be turned into the channel of another stream and mingled with its water, and then reclaimed; but in reclaiming it the water already appropriated by another must not be diminished.

First in time, first in right.

SEC. 3159. As between appropriators, the one first in time is the first in right.

Notice of appropriation.

SEC. 3160. A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

1. That he claims the water there flowing to the extent of (giving the number) inches, measured under a four inch pressure, and accurately describing the point of diversion;
2. The purpose for which he claims it, and the place of intended use;
3. The means by which he intends to divert it, and the size of the flume, ditch, pipe or aqueduct in which he intends to divert it; a copy of the notice must, within ten days after it is posted, be recorded in the office of the Recorder of the county in which it is posted.

Diligence in appropriating.

SEC. 3161. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snow or rain.

Completion defined.

SEC. 3162. By "completion" is meant conducting the waters to the place of intended use.

Doctrine of relation applied.

SEC. 3163. By a compliance with the above rules, the claimant's right to the use of the water relates back to the time the notice was posted.

Forfeiture.

SEC. 3164. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith, except as provided in the next section.

Ditches, etc., heretofore made.
11 ses., 268-9.

SEC. 3165. All ditches, canals, and other works heretofore made, constructed, or provided, by means of which the waters of any stream have been diverted and applied to any beneficial use, must be taken to have secured the right to the waters claimed, to the extent of the quantity which said works are capable of conducting, and not exceeding the quantity claimed, without regard to or compliance with, the requirements of this chapter.

Rights of present claimant.

SEC. 3166. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it and who have not diverted nor applied it to some useful purpose, must, after this Title takes effect, and within ninety days thereafter, proceed as in this Title provided, or their right ceases.

Recorder to keep book.

SEC. 3167. The Recorder of each county must keep a book, in which he must record the notices provided for in this Title.

CHAPTER II.

RIGHT OF WAY FOR DITCHES.

SECTION
3180. Right of land owners.
3181. Land owners entitled to right of way.
3182. When right of way is refused, to petition County Commissioners.
3183. Oath of appraiser; must hear proofs and make certificates.
3184. Rights of riparian owners.

SECTION
3185. Right of way.
3186. Ditches, etc., to be kept in good repair.
3187. Not to interfere with prior rights.
3188. Insufficiency of supply of water.
3189. Order of right to use of water; repair of ditches.
3190. Use of excess of water.

Right of land owners.
11 ses., 269.

SECTION 3180. All persons, companies, and corporations, owning or claiming any lands situated on the banks or in the vicinity of any stream, are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.

Land owners entitled to right of way.
11 ses., 269.

SEC. 3181. When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal, or other conduit on his own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities otherwise for the watering of said lands cannot be had, such owner or claimants are entitled to a right of way through the lands of others, for the purposes of irrigation; *Provided,* That in the making, constructing, keeping up, and maintenance of such ditch, canal or conduit, through the lands of others, the person, company, or corporation, proceeding under this section, and those succeeding to the interests of such person, company, or corporation, must keep such ditch, canal, or other conduit in good repair, and are liable to the owners or claimants of the lands crossed by such work or aqueduct, for all damages occasioned by the overflow thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.

To keep conduit in good repair.

Damages.

When right of way is refused.
11 ses., 269.

SEC. 3182. In case of the refusal of the owners or claimants of any lands through which such ditch, canal, or other works are proposed to be made or constructed, to allow the passage thereof, the persons, company or corporation desiring the right of way, may present to the County Commissioners of the county, a petition describing the lands to be crossed, the size of the ditch, canal, or works, the quantity of land required to be taken, and setting forth the names of the owners or parties interested in the lands to be crossed, and praying for the appointment of three appraisers to ascertain the compensation to be made to such owners or parties interested. Upon the filing of said petition, the County Commissioners must give notice, by publication in a newspaper, if there be any printed in the county, or if there be none, by posting such notice in three of the most public places in the county, one of which must be at the county seat, that at a time and place specified in said notice, said petition will be heard, and such appraisers appointed, unless good cause be shown by the parties adversely interested, why the said petition should be denied. Said notice must be published or posted for not less than thirty days prior to the hearing thereon, and the expenses of the publication or posting of the same must be defrayed by the petitioners.

Oath of appraisers. 11 ses., 270.

SEC. 3183. The said appraisers must, before entering on the duties of their office, take an oath to faithfully and impartially perform the duties as such appraisers, and make a true and just award of the amount of the compensation to be paid for the right of way over and use of the lands to be crossed by such ditch, canal or other conduit. They must hear the allegations and proofs offered by the respective parties, and after viewing the lands and premises, ascertain and certify the compensation which, in their judgment, it is just and proper to make to the parties owning or interested in the lands to be crossed for the use of the same, and for damages, if any, on account of injury to other portions of the tract of land of any owner or interested party, after making allowance and deduction for real and direct benefits which such owner or party interested will derive from the making of such ditch, canal, or other works. The appraisers, or a majority of them, must subscribe such certificate, and the same must be recorded in the office of the County Recorder, and upon the payment of the compensation and damages, if any, or the tender thereof to the proper parties, or in the absence of such parties from the county, then, upon deposit of the amount in the county treasury to the credit of the said party, the persons, company, or corporations, petitioners have the right of entry upon and of way for the proposed ditch, canal, or other works.

To hear proofs, etc.

Subscribe and record certificate.

Right of riparian owners. 11 ses., 271.

SEC. 3184. All persons, companies and corporations, owning or having the passory title or right to lands adjacent to any stream, have the right to place in the channel of, or upon banks or margin of the same, rams or other machines for the purpose of raising the waters thereof to a level above the banks, requisite for the flow thereof to and upon such adjacent lands; and the right of way over and across the lands of others, for conducting said waters, may be acquired in the manner prescribed in the last two sections.

Right of way, 11 ses., 271.

SEC. 3185. Where the owners of any spring, or the appropriators thereof, or of any stream, desire to conduct the waters thereof to any lands for purposes of irrigation, or to any city or town for the use of the inhabitants thereof, or to any factory, or to any distant place, with the intent to apply the same to a beneficial use, and to accomplish such object, it is necessary to cross with ditches, flumes or other conduit, the lands owned or occupied by others than the owners or appropriators of such spring or stream, the right of way over and across the lands of others for conducting said water may be acquired in the manner above provided.

Ditches, etc., to be kept in good repair. 11 ses., 271.

SEC. 3186. The owners or constructors of ditches, canals, works, or other aqueducts, and their successors in interest, using and employing the same to convey the waters of any stream or spring, whether the said ditches, canals, works or aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same, and the embankments, flumes, or other conduit, by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others.

Prior rights. 11 ses.

SEC. 3187. Nothing in this chapter contained must be so construed as to interfere with or impair the rights to water appropriated and acquired prior to the passage of this chapter; but this reservation in behalf of existing rights does not exempt such appropriators from liability as provided in the last section.

Insufficiency of supply of water. 11 ses., 271.

SEC. 3188. In case the volume of water in any stream is not sufficient to supply continually the wants for irrigating purposes of the owners or proprietors of land in any district or neighborhood in which customs exist, for distributing the waters amongst such owners or proprietors, under the direction or supervision of persons recognized by the community interested to have authority therein, the waters diverted must, in such case, be held to be a common right in those accustomed to a participation in the use and enjoyment of such distribution, and such customs must be upheld in all courts as conferring such common right in the same; but this section does not affect any prior vested rights.

Order of right to use of water. 11 ses., 272.

SEC. 3189. In case any person, company or corporation has constructed a ditch for the purpose of directing the water of any river, creek, cañon, ravine or spring for the purpose of selling the water thereof for irrigating purposes, the owners or cultivators of land along the line of, and covered by said ditch or canal, are entitled to, and have the right to the use of water from said ditch or canal for the purpose of irrigating said land so owned or cultivated, in the following order: *First,* All persons through whose land said ditch or canal runs, are entitled to the use of the water thereof in the order of their location along the line of said ditch or canal. *Second,* After those through whose land the ditch or canal runs, those upon either side of the line of the ditch or canal are entitled to the use of the water thereof; those equally distant from the line of said ditch or canal, are entitled to priority in the order of their location along the line of said ditch or canal; *Provided,* That the owners or cultivators of such lands pay the usual and customary rates for the use of said water. And whenever any ditch or canal has been constructed for the purpose of conveying water and selling the same for irrigating purposes, it is unlawful for the owner or owners of said ditch or canal to change the line of said ditch or canal so as to prevent or interfere with the use of water from said ditch or canal, by any one who, prior to the proposed change, had used water for irrigating purposes from said ditch or canal. And it is hereby made the duty of the owner or owners of any such ditch or canal, to keep the same in good repair, and to cause the water to flow through said ditch or canal to the extent of its capacity, if so much be needed, during the entire time that water is necessary for irrigating purposes; *Provided,* That the river, creek, cañon, ravine, or spring from which the water is taken, furnishes an amount of water sufficient for such purpose, subject to the appropriation of the owner, or owners of such ditch or canal. For a failure to cause the water to flow, as aforesaid, the owner or owners, or lessees of any such ditch are personally liable to any one for any damages resulting from such failure, and in addition to such personal liability, such damage is a lien upon such ditch or canal, which lien continues in force until such damages are paid.

Repair of ditches.

SEC. 3190. No person entitled to the use of water from any such ditch or canal, must, under any circumstances, use more water than good husbandry requires for the crop or crops that he cultivates; and any person using an excess of water, is liable to the owner of such ditch or canal, for the value of such excess; and in addition thereto, is liable to all damages sustained by any other person, who would have been entitled to the use of such excess of water, as fixed by this section.

Excess of water, use of. 11 ses., 273.

CHAPTER III.

DISTRIBUTION FOR IRRIGATION.

SECTION		SECTION	
3200.	Water districts; water master, election of, bonds of, etc.	3203.	Repair of ditches.
3201.	Water master for private ditch.	3204.	Headgates and dams.
3202.	Duties of water master.	3205.	Liability for opening gate or cutting ditch.

SECTION 3200. Any vicinity or neighborhood the inhabitants of which use the waters of any ditch, stream, or spring for the purpose of irrigation, or have, or claim a common right to the waters of any ditch, stream, or spring for such purposes, constitute a water district, and a majority of such inhabitants having such common right may annually, on the fourth Monday of March, at a meeting of such inhabitants, elect a water master for their district, whose duty it is to superintend the distribution of such waters among those having such common right, or accustomed to participate in such common use. The water master of the district, or if there be no water master, or upon his failure or neglect so to do, any six residents of the district entitled to such common right, must give three days' public notice of the time and place of such election, by posting written or printed notices thereof in three of the most public places in the water district. Said meeting must be opened at ten o'clock in the forenoon, and the majority of those present who are entitled to such common right, may organize the same and determine the manner of such election, and whether the same be by ballot or otherwise. The water

Water districts. 11 ses., 273.

Water master.

Election of water master.

master must execute to the county in which his district is situate, and file in the office of the County Recorder, for the benefit of any person who may be injured by his wanton or illegal act, or omission, as such, a bond in the sum of five hundred dollars, with two sufficient sureties, and conditional for the faithful and impartial discharge of his duties as water master of his district; and any person so injured may have an action on such bond in his own name for his actual damages. A water master may employ one or more deputies, as authorized by the inhabitants of his district claiming such common right, as aforesaid; and he is liable for their wanton and illegal acts upon his official bond; and, before entering upon their duties, the water master and his deputies, must take and subscribe an oath, before any magistrate, faithfully and impartially to discharge the duties of their office; and they may receive such compensation, to be paid in such manner as may be agreed upon with such inhabitants.

Bond of.

Compensation of.

Water master for private ditch. 11 ses., 274.

SEC. 3201. The owner or owners of any ditch for the distribution and sale of water, for the purposes of irrigation, must employ a water master for the distribution of the water of the ditch to the persons purchasing the same for such purposes; and no account or demand for the use of such water during any time such water master is not so employed, is valid or collectable.

Duties of water master. 11 ses., 274.

SEC. 3202. The water master and his deputies must regulate the distribution of water among the several ditches of his district, and among the several inhabitants who are entitled and accustomed to the use thereof, according to their respective rights and necessities; and when the quantity of water is not sufficient to afford a full supply to those entitled or accustomed to use the same, according to the usage of the district, the water master and his deputies must regulate the quantity used by each person, and the time at and during which, each person may use the same; *Provided*, Nothing in this chapter must be so construed as to interfere with the vested rights of individual companies or corporations, or in any manner to interfere with the rights of individuals, companies, or corporations to the use and control of water, which is or may be their private property.

Repair of ditches. 11 ses., 275.

SEC. 3203. Where a ditch is common property, or there is a common right to the use of the water of a ditch without payment therefor, and any labor or materials are necessary for the repair or cleaning of the ditch, or any gate or flume thereon or thereunto belonging, the water master of the district may make a fair *pro rata* assessment of labor or materials against the inhabitants of the district claiming the use of such water, according to the benefits received by each; and if any person so assessed neglects or refuses, for the period of three days after notice so to do from the water master or his deputy, to furnish his just proportion of the necessary labor or materials, according to such assessment, must pay his *pro rata* in cash to be recovered, with costs, in an action by the water master in his own name.

Headgates and dams. 11 ses., 275.

SEC. 3204. The water master must see that there are provided the necessary and proper headgates and dams; and that the water is turned and runs into the ditches of his district at the proper season of the year; and he may require all persons receiving water to construct proper gates at the points at which they take water from any ditch, dam or reservoir; and he has such control of the location of ditches and gates as may be necessary to secure the most equitable distribution of the water among all entitled to its use.

Liability for opening gate or cutting ditch.
11 ses., 275.

SEC. 3205. Any person who, without the consent of the water master of the district, diverts any water from the ditch or channel where it was placed, or caused, or left to run by the water master or his deputies, or who shuts or opens any ditch, gate or dam with intent so to divert any water, and thereby deprive any person of the use of the same during any part of the time he is entitled to such use, or who, without the consent of the water master, cuts any ditch or the banks thereof, or breaks or destroys any gate or flume, is guilty of a misdemeanor, and is liable in a civil action to any person injured thereby in three times the actual damage sustained in consequence of any such wrongful act or acts.

TITLE X.

CONTRACTS AND OBLIGATIONS.

CHAPTER I.

General Provisions.

Section
3220. Who may contract.
3221. When contract for benefit of third person may be enforced.
3222. Written instrument presumptive evidence of consideration.
3223. Burden of proof.
3224. What contracts may be oral.
3225. Contract not in writing through fraud, may be enforced against fraudulent party.

Section
3226. Corporate seal, how affixed.
3227. Provisions abolishing seals.
3228. Contract partly written and partly printed.
3229. Restraints upon legal proceedings.
3230. Written receipts.
3231. Objections to mode of offer.

Who may contract.

Section 3220. All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

When contract for benefit of third person may be enforced.

Sec. 3221. A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

Written instrument, evidence of consideration.

Sec. 3222. A written instrument is presumptive evidence of a consideration.

Burden of proof.

Sec. 3223. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

What contracts may be oral.

Sec. 3224. All contracts may be oral, except such as are specially required by statute to be in writing.

Contract through fraud may be enforced against fraudulent party.

Sec. 3225. Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice may enforce it against the fraudulent party.

Corporate seal, how affixed.

Sec. 3226. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

Seals abolished.

Sec. 3227. All distinctions between sealed and unsealed instruments are abolished.

Contract, partly written and partly printed.

Sec. 3228. Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form, and if the two are absolutely repugnant, the latter must be so far disregarded.

Restraints upon legal proceedings.

Sec. 3229. Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

Written receipts.

Sec. 3230. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

Objections to mode of offer.

SEC. 3231. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor if not then stated.

CHAPTER II.

SALES.

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3245. Warranty of title to personal property.
3246. Warranty on sale by sample.
3247. Marks of quality and quantity.
3248. Warranty of provisions for domestic use.
SECTION
3249. Notice of election as to delivery.
3250. Delivery, where made.
3251. Expense of transportation.
3252. When seller must act as depositary.

Warranty of title to personal property.

SECTION 3245. One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unincumbered title thereto.

Warranty on sale by sample.

SEC. 3246. One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

Marks of quality and quantity.

SEC. 3247. One who sells any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, thereby warrants the truth thereof.

Warranty of provisions for domestic use.

SEC. 3248. One who makes a business of selling provisions for domestic use, warrants by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome.

Notice of election as to delivery.

SEC. 3249. When either party to a contract of sale has an option as to the time, place, or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

Delivery, where made. Comp. laws, 650.

SEC. 3250. Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence it is deliverable at the place where it is produced.

Expense of transportation. Comp. laws, 650.

SEC. 3251. One who sells personal property must bring it to his own door or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

When seller must act as depository.

SEC. 3252. After personal property has been sold and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property without charge, until the buyer has had a reasonable opportunity to remove it.

TITLE XI.

PARTNERSHIP.

CHAPTER I.

SPECIAL PARTNERSHIP.

SECTION
3270. Formation of special partnership.
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3294. The name of a special partner not used, unless.

Formation of special partnership. 13 ses., 148.

SECTION 3270. A special partnership may be formed by two or more persons in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance.

Of whom to consist. 13 ses., 148

SEC. 3271. A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

Certified statement. 13 ses., 148.

SEC. 3272. Persons desirous of forming a special partnership must severally sign a certificate stating:

First. The name under which the partnership is to be conducted;

Second. The general nature of the business intended to be transacted;

Third. The names of all the partners, and their residences, specifying which are general and which are special partners;

Fourth. The amount of capital which each special partner has contributed to the common stock;

Fifth. The periods at which such partnership will begin and end.

Acknowledged and recorded. 13 ses., 148.

SEC. 3273. Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgments of deeds, and recorded in the office of the Recorder of the county, in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the Recorder in whose office it is recorded, must be recorded in like manner in the office of the Recorder in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

Affidavit as to sums contributed. 13 ses., 148.

SEC. 3274. An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, must be filed in the same office with the original certificate.

No partnership until compliance. 13 ses., 149.

SEC. 3275. No special partnership is formed until the provisions of the last five sections are complied with.

Certificate to be published. 13 ses., 149.

SEC. 3276. The certificate mentioned in this chapter or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in this Territory published nearest thereto. Such publication must be made once a week, for four successive weeks, beginning within one month from the time of filing the certificate. In case such publication is not so made, the partnership must be deemed general.

Affidavit of publication filed. 13 ses., 149.

SEC. 3277. An affidavit of the making of the publication mentioned in the preceding section made by the printer, publisher or chief clerk of the newspaper in which such publication is made, may be filed with the County Recorder with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

Renewal of special partnership. 13 ses., 149.

SEC. 3278. Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation.

Who to do business. 13 ses., 149.

SEC. 3279. The general partners only have authority to transact the business of a special partnership.

Special partners may advise. 13 ses., 149.

SEC. 3280. A special partner may at all times investigate the partnership affairs, and advise his partners or their agents, as to their management.

May loan money. 13 ses., 149.

SEC. 3281. A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

General partners may sue, etc. 13 ses., 149.

SEC. 3282. In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

Withdrawal of capital. 13 ses., 149.

SEC. 3283. No special partner under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance.

Interest and profits. 13 ses., 149.

SEC. 3284. A special partner may receive such lawful interest and such proportion of profits as may be agreed upon if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

Result of withdrawing capital. 13 ses., 149.

SEC. 3285. If a special partner withdraws capital from the firm contrary to the provisions of this chapter, he thereby becomes a general partner.

Preferential transfer void. 13 ses., 149.

SEC. 3286. Every transfer of the property of a special partnership, or of any partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner, over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given in like manner and with the like intent, is in like manner void.

Liability of partners. 13 ses., 150.

SEC. 3287. The general partners in a special partnership are liable to the same extent as partners in a general partnership.

Of special partners. 13 ses., 150.

SEC. 3288. The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

First. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable as a general partner to all creditors of the firm;

Second. If he has willfully interfered with the business of the firm, except as permitted in this chapter, he is liable in like manner; or

Third. If he has willfully joined in or assented to an act contrary to any of the provisions of this chapter, he is liable in like manner.

Liability for unintentional act. 13 ses., 150.

SEC. 3289. When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually misled thereby to his prejudice.

Who may question existence of special partnership. 13 ses., 150.

SEC. 3290. One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by this chapter.

When special partnership becomes general. 13 ses., 150.

SEC. 3291. A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact duly verified and signed by one or more of the partners, is not filed with the County Recorder with whom the original certificate of the partnership was filed, and notice thereof published as is provided in this chapter for the publication of the certificate.

How new special partners may be admitted. 13 ses., 150.

SEC. 3292. New special partners may be admitted into a special partnership upon a certificate stating the names, residences and contributions to the common stock of each of such partners, signed by each of them, and by the general partners, verified, acknowledged, or proved, according to the provisions of this chapter, and filed with the County Recorder with whom the original certificate of partnership was filed.

Dissolution of special partnership. 13 ses., 150.

SEC. 3293. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the County Recorder, with whom the original certificate was recorded, and published once in each week for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

Name of special partner not used, unless. 13 ses., 151.

SEC. 3294. The name of a special partner must not be used in the firm name of partnership, unless it be accompanied with the word "limited."

CHAPTER II.

MINING PARTNERSHIPS.

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3300. When mining partnership exists.
3301. Express agreement not necessary to constitute.
3302. Profits and losses, how shared.
3303. Lien of partners.
3304. Mine—Partnership property.
3305. Partnership not dissolved by sale of interest.
3306. Purchaser takes, subject to liens, unless, etc.
3307. Takes with notice of lien, when.
3308. Contract in writing, when binding.
3309. Owners of majority of shares govern.

SECTION 3300. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom, actually engage in working the same. When mining partnership exists.

SEC. 3301. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation or existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom. Express agreement not necessary to constitute.

SEC. 3302. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine, bears to the whole partnership capital or whole number of shares. Profits and losses, how shared.

SEC. 3303. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its use. A lien exists in favor of the creditors notwithstanding there is an agreement among the partners that it must not. Lien of partners.

SEC. 3304. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property. Mine partnership property.

SEC. 3305. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership. Partnership not dissolved by sale of interest.

SEC. 3306. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of his partnership unless he purchased in good faith, for a valuable consideration, without notice of such lien. Purchaser takes, subject to liens, unless, etc.

SEC. 3307. A purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership. Takes with notice of lien, when.

SEC. 3308. No member of a mining partnership or other agent or manager thereof can, by a contract in writing, bind the partnership except by express authority derived from the members thereof. Contract, when binding.

SEC. 3309. The decision of the members owning a majority of the shares or interests in a mining partnership, binds it in the conduct of its business. Owners of majority of shares govern.

TITLE XII.

LIENS.

CHAPTER I.

LIENS IN GENERAL.

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3325. Lien what.
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3327. General lien, what.
3328. Special lien, what.
3329 Prior liens.
3330. Contracts subject to this chapter.
3331. Lien on future interest.
3332. Lien may be created by contract.
3333. Lien, or contract for, transfers no title.

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3334. Certain contracts void.
3335. Creation of lien does not imply personal obligation.
3336. Priority of mortgage for price.
3337 Right to redeem.
3338. Rights of inferior lienor.
3339. When restoration extinguishes lien.

Lien, what.

SECTION 3325. A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

General or special.

SEC. 3326. Liens are either general or special.

General lien, what.

SEC. 3327. A general lien is one which the holder thereof is entitled to enfore as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

Special lien, what.

SEC. 3328. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

Prior liens.

SEC. 3329. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

Contracts subject to this chapter.

SEC. 3330. Contracts of mortgage and pledge, are subject to all the provisions of this chapter.

Liens on future interest.

SEC. 3331. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of said interest.

Lien may be created by contract.

SEC. 3332. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

Lien, etc., transfers no title.

SEC. 3333. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

Certain contracts void.

SEC. 3334. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

Creation of lien does not imply personal obligation.

SEC. 3335. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

Priority of mortgage for price

SEC. 3336. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

Right to redeem.

SEC. 3337. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

Rights of inferior lienor.

SEC. 3338. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests upon satisfying the claim secured thereby.

When restoration extinguishes.

SEC. 3339. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration.

CHAPTER II.

MORTGAGES IN GENERAL.

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3353. Transfer of interest, when deemed a mortgage.
3354. Transfer made subject to defeasance may be proved.
3355. Mortgage, on what a lien.
335 . Subsequently acquired title inures to mortgagee.
3357. Power of attorney to execute.
3358 Recording assignment of mortgage.
SECTION
3359. Recording assignment of mortgage not notice to mortgagor.
3360. Mortgage passes by assignment of debt.
3361. Mortgage, how discharged.
3362. Same.
3363. Same.
3364. Duty of mortgagee on satisfaction of mortgage.
3365. Affidavit as to payment of taxes on mortgages.

Mortgage, what.

SECTION 3350. Mortgage is a contract by which specific property is hypothecated, for the performance of an act without the necessity of a change of possession.

To be in writing.

SEC. 3351. A mortgage can be created, renewed or extended only by writing, executed with the formalities required in the case of a grant or conveyance of real property.

Lien of mortgage when special.

SEC. 3352. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

Transfer of interest when deemed a mortgage.

SEC. 3353. Every transfer of an interest in property other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by an actual change of possession, in which case it is to be deemed a pledge.

Transfer made subject to defeasance may be proved.

SEC. 3354. The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or incumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

Mortgage, on what a lien.

SEC. 3355. A mortgage is a lien upon everything that would pass by a grant or convenance of the property.

Subsequently acquired title inures to mortgagee.

SEC. 3356. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

Power of attorney to execute.

SEC. 3357. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified and recorded in like manner as powers of attorney for grants of real property.

Recording assignment of mortgage.

SEC. 3358. An assignment of a mortgage may be recorded in like manner with a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

Recording assignment of mortgage not notice to mortgagor.

SEC. 3359. The record of the assignment of a mortgage is not of itself notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

Mortgage passes by assignment of debt.

SEC. 3360. The assignment of a debt secured by mortgage carries with it the security.

Mortgage, how discharged. Comp. laws, 602.

SEC. 3361. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the Recorder, who must certify the acknowledgment in form substantially as follows:

"Signed and acknowledged before me this———day of ————, in the year of———.

A. B., Recorder."

Same. Comp. laws, 603.

SEC. 3362. A recorded mortgage, if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee his personal representative or assigns, acknowledged or proved and certified as prescribed by the chapter on "Recording Transfers," stating that the mortgage has been paid, satisfied, or discharged.

Same. Comp. laws, 603.

SEC. 3363. A certificate of the discharge of a mortgage, and the proof or acknowledgment thereof must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

Satisfaction of mortgages. Comp. laws, 603.

SEC. 3364. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on the demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof so as to entitle it to be recorded, or he must enter satisfaction or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgagee, who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars.

Affidavit as to payment of taxes on mortgages. Act Dec. 30, 1880.

SEC. 3365. Before satisfaction or release of any mortgage or lien, other than mortgages given to secure the purchaser money of the property mortgaged to be entered or filed for record, the Recorder must be satisfied by affidavit reduced to writing, either taken before him, or any officer authorized to administer oaths, which affidavit may be made by the mortgagee or the person holding such mortgage or lien, or his agent or attorney, and which must be filed in said Recorder's office, that all taxes assessed on the mortgage or lien or on the debt secured thereby have been paid. Said affidavit must be substantially in the following form:

I do solemnly swear, that all taxes assessed on this mortgage, or debt secured by this mortgage or lien, had been paid.

If any County Recorder enters or permits to be entered satisfaction without the filing of such affidavit, he is liable, on his official bond to pay the county the sum of five hundred dollars, which may be recovered by an action, which it is the duty of the District Attorney to prosecute, and he shall have for each prosecution twenty-five per centum of the amount recovered.

CHAPTER III.

MORTGAGE OF REAL PROPERTY.

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3375. What real property may be mortgaged.
SECTION
3376. Defeasance, to affect grant absolute on its face, must be recorded.
3377. May be recorded.

What may be mortgaged.

SECTION 3375. Any interest in real property which is capable of being transferred may be mortgaged.

Defeasance to affect grant absolute on its face, must be recorded.

SEC. 3376. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasable on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, is recorded in the office of the County Recorder of the county where the property is situated.

May be recorded.

SEC. 3377. Mortgages of real property may be acknowledged, or proved, certified and recorded in like manner and with like effect as grants and conveyances thereof.

CHAPTER IV.

MORTGAGE OF PERSONAL PROPERTY.

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3395. Return of sale.
3396. Action to contest foreclosure.
3397. Removal of property.
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On what property. 13 ses., 47.

SECTION 3385. Chattel mortgages may be made upon all property, goods or chattels not defined by statute to be real estate.

When void as to third person.

SEC. 3386. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrances of the property in good faith and for value, unless:

1. It is accompanied by the affidavit of the mortgagor that is made in good faith and without any design to hinder, delay, or defraud creditors;
2. It is acknowledged or proved, certified, and recorded in like manner as grants of real property.

Mortgages to be recorded. 13 ses., 74.

SEC. 3387. Mortgages of personal property must be recorded in the office of the County Recorder, of the county in which the mortgaged property be situated, in a book kept exclusively for that purpose; *Provided*, That property in transit from the possession of the mortgagee to the county in which the mortgagor resides, or to a location for use, shall for a reasonable length of time for such transportation be considered as located in the county to which the same is being removed; *Provided, further*, That if the mortgagee receive and return actual possession of the property mortgaged, he may omit the recording of his mortgage, during the continuance of such actual possession.

Removal from the county. 13 ses., 74.

SEC. 3388. When mortgaged personal property is thereafter removed from the county wherein it was situated at the time of the execution of the mortgage by the written consent of the mortgagee, it is, except as between the parties to the mortgage, exempt from the operations thereof, unless, either, first, the mortgagee within ten days after such removal cause the mortgage to be recorded in the county to which the property has been removed, or second, the mortgagee within ten days after such removal take possession of the mortgaged property.

How attached. 13 ses., 75.

SEC. 3389. All mortgaged personal property may be attached at the suit of any creditor of the mortgagor; such creditor, however, must pay or tender to the mortgagee, the amount due him on such mortgage before the officer making such attachment is entitled to the actual possession of such property. When the property thus attached and redeemed by the creditor is sold by the officer under due legal proceedings, he must:

First. Pay to such creditor the amount advanced by him to pay the mortgage with lawful interest thereon;

Second. Pay all costs appertaining to the judgment, execution and sale;

Third. Pay the judgment creditor the amount of his judgment, and the surplus, if any, to the judgment debtor; if the creditor of the mortgagor prefer he may cause to be attached the equity of redemption of the mortgagor; such attachment is made by serving upon the mortgagor and the mortgagee a copy of the writ of attachment, together with a notice signed by the officer that the interest of the mortgagor in such property is attached, when the sale of such equity is made on execution obtained by such attaching creditor, the proceeds must be applied to the payment of the costs and the satisfaction of the judgment, and the remainder, if any, paid to the judgment debtor. The purchaser at such sale is entitled to the possession of the property, subject, however, to the rights of the mortgagee.

Foreclosure. 13 ses., 75.

SEC. 3390. Any mortgage of personal property, when the debt to secure which the mortgage was given is due, may be foreclosed by notice and sale as hereinafter provided, or it may be foreclosed by action in the District Court having jurisdiction in the county in which the property is situated.

Foreclosure by notice and sale. 13 ses., 75.

SEC. 3391. In proceeding to foreclose by notice and sale, the mortgagee, his agent or attorney, must make an affidavit stating the date of the mortgage, the names of the parties thereto, a full description of the property mortgaged, and the amount due thereon. Such affidavit must be placed in the hands of the Sheriff, together with a notice signed by the mortgagee, his agent or attorney, requiring such officer to make the mortgaged property into his possession and sell the same.

Service of affidavit. 13 ses., 75.

SEC. 3392. The affidavit must be personally served upon the mortgagor, or other person having possession of the mortgaged property, in the same manner as is provided by law for the service of a summons. At the time of such service of the affidavit, the officer must also serve a notice signed by himself, setting forth a full description of the property, the amount claimed to be due by the mortgagee, and the time and place of sale; *Provided, however,* That if the mortgagor or other person interested, cannot be found within the county wherein the mortgage is being foreclosed, and has no agent therein known to the officer, the general notice of sale directed in the next section is sufficient service upon all parties interested.

Notice of sale. 13 ses., 76.

SEC. 3393. The officer must take the property into his possession and give notice of sale in the same manner and for the same length of time as is required in cases of the sale of like property on execution, and the sale must be conducted in the same manner.

Bill of sale. 13 ses., 76.

SEC. 3394. The purchaser at such sale takes all the interest which the mortgagor had in the mortgaged property at the time of the execution of the mortgage, and the officer selling must execute to him a bill of sale of the property, which must set forth the date of the mortgage, the names of the parties thereto, the date of sale, a description of the property, and the amount paid therefor.

Return of sale. 13 ses., 76.

SEC. 3395. The officer must make return upon the affidavit hereinbefore mentioned of all his proceedings, and must transmit the same by mail or otherwise, to the Clerk of the District Court having jurisdiction in the county in which the sale was made, and the clerk must file such return in his office.

Action to contest foreclosure. 13 ses., 76.

SEC. 3396. The right of the mortgagee to foreclose, as well as the amount claimed to be due, may be contested in the District Court by any person interested in so doing, for which purpose an injunction may issue if necessary.

Removal of property. 13 ses., 76.

SEC. 3397. If the mortgagor of any property mortgaged in pursuance of the provisions of this chapter, while such mortgage remains unsatisfied, in whole or in part, willfully removes from the county or counties where the mortgage is recorded, destroys, conceals, sells; or in any manner disposes of the property mortgaged, or any part thereof, without consent of the holder of said mortgage, is guilty of larceny, and such sale or transfer is void.

Time to record. 13 ses., 77.

SEC. 3398. The mortgagee is allowed one day for every twenty miles or fraction thereof of the distance between his residence and the County Recorder's office where such mortgage is to be recorded, to conform to the provisions of this chapter, before any subsequent incumbrance, sale or seizure, under any process, is effected to hold or bind the mortgaged property.

CHAPTER V.

PLEDGE.

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3428. Pledgee's purchase of property pledged.
3429. Pledgee may foreclose right of redemption.

When contract deemed pledge.

SECTION 3410. Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge.

Delivery essential to validity of pledge.

SEC. 3411. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereafter prescribed.

Increase of thing.

SEC. 3412. The increase of property pledged is pledged with the property.

Lienor may pledge property.

SEC. 3413. One who has a lien upon property may pledge it to the extent of his lien.

Real owner cannot defeat pledge.

SEC. 3414. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title to defeat a pledge of the property made by the other, to a pledgee who received the property in good faith, in the ordinary course of business and for value.

Pledge holder, what.

SEC. 3415. A pledgor and pledgee may agree on a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

Pledge holder must enforce rights.

SEC. 3416. A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Debtor's Misrepresentation of value of pledge.

SEC. 3417. Where a debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

When pledgee may sell.

SEC. 3418. When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

When pledgee must demand performance

SEC. 3419. Before property pledged may be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

Notice of sale to pledgor.

SEC. 3420. A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

Waiver of notice of sale.

SEC. 3421. Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

Waiver of demand.

Sec. 3422. A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform after performance is due; but cannot waive it in any other manner except by contract.

Sale must be by auction.

Sec. 3423. The sale by a pledgee of property pledged, must be made by public auction in the manner and upon the notice required upon sale of personal property under execution; and must be for the highest obtainable price.

Pledgee's sale of securities.

Sec. 3424. A pledgee cannot sell any evidence of debt pledged to him except the obligations of governments, states, territories, counties or corporations; but he may collect the same when due.

Sale on the demand of pledgor.

Sec. 3425. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold and its proceeds to be applied to such satisfaction when due.

Surplus to be paid to pledgor.

Sec. 3426. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor on demand.

Same.

Sec. 3427. When property pledged is sold before the claim of the pledgee is due, he may retain out of the proceeds all that can possible become due under his claim, until it becomes due.

Pledgee's purchase of property pledged.

Sec. 3428. A pledgee, or pledge holder, cannot purchase the property pledged, except by direct dealing with the pledgor.

Pledgee may foreclose right of redemption.

Sec. 3429. Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER VI.

Other Liens.

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Lien of seller on real property.

Section 3440. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

When transfer of contract waives lien.

Sec. 3441. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

Extent of seller's lien.

Sec. 3442. The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value.

Lien ot seller of personal property.

SEC. 3443. One who sells personal property has a specific lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price.

Purchaser's lien on real property.

SEC. 3444. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

Lien for services.

SEC. 3445. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due him from the owner of such service, and livery or boarding or feed stable proprietors, and persons pasturing horses, or stock, have a lien, dependent on possession for their compensation in caring for, boarding, feeding, or pasturing such horses or stock.

Liens on personal property.

SEC. 3446. A person who makes, alters, or repairs any article of personal property, at the request of the owner, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by giving ten days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

Lien of factor.

SEC. 3447. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

Banker's lien.

SEC. 3448. A banker has a general lien, dependent on possession, upon all property in his hands, belonging to a customer, for the balance due to him from such customer in the course of the business.

Mechanic's lien

SEC. 3449. The liens of mechanics, for materials and services upon real property, are regulated by the Code of Civil Procedure.

TITLE XIII.

NEGOTIABLE INSTRUMENTS.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

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Instrument payable to a person or his order, how construed. Comp. laws, 652.

SECTION 3465. An instrument otherwise negotiable in form, payable to a person named, but with the words added, "or to his order" or "to bearer;" or words equivalent thereto, is in the former case payable to the written order of such person, and in the latter case payable to the bearer.

Unindorsed note, when negotiable. Comp. laws, 653-5.

SEC. 3466. A negotiable instrument made payable to the order of the maker, or of a fictitous person if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts as if payable to the bearer.

Fictitious payee.

SEC. 3467. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

Presumptions of consideration.

SEC. 3468. The signature of every drawer, acceptor and indorser of a negotiable instrument is presumed to have been made for a valuable consideration before the maturity of the instrument and in the ordinary course of business.

Agreement to indorse.

SEC. 3469. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

When may be made on separate paper.

SEC. 3470. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

Kinds of indorsements.

SEC. 3471. An indorsement may be general or special.

General, what.

SEC. 3472. A general indorsement is one by which no indorsee is named.

Special, what.

SEC. 3473. A special indorsement specifies the indorsee.

General, how made special.

SEC. 3474. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one by writing above it a direction for payment to a particular person.

Destruction of negotiability by indorser.

SEC. 3475. A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

Implied warranty of indorser.

SEC. 3476. Every indorser of a negotiable instrument warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be;
2. That he has a good title to it;
3. That the signatures of all prior parties are binding upon them;
4. That if the instrument is dishonored, the indorser will upon notice thereof duly given to him, or without notice, where it is excused by law, pay so much of the same as the holder paid therefor, with interest, unless exonerated under the provisions of this Title for failure to present the same.

Indorsement without recourse.

SEC. 3477. An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement he is responsible only to the same extent as in the case of a transfer without indorsement.

Same.

SEC. 3478. Except as otherwise prescribed by the last section, an indorsement without recourse has the same effect as any other indorsement.

Indorsee, privy to contract.

SEC. 3479. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

Effect of want of consideration.

SEC. 3480. The want of consideration for the undertaking of a maker, acceptor or indorser of a negotiable instrument, does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

Indorsee in due course, what.

SEC. 3481. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

Instrument left blank.

SEC. 3482. One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

Effect of want of demand on principal debtor.

SEC. 3483. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge him, but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

Presentment, how made.

SEC. 3484. Presentment of a negotiable instrument for payment when necessary, must be made as follows, as nearly as by reasonable diligence it is practicable:

First. The instrument must be presented by the holder or his agent;

Second. The instrument must be presented to the principal debtor if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge of the place, or employed therein, if one can be found there;

Third. An instrument which specifies a place for its payment, must be presented there; and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found at the place;

Fourth. An instrument which does not specify a place for its payment, must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presentor; and,

Fifth. The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and if it be payable at a banking house, within the ususal banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day;

Sixth. If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused.

Apparent maturity, when.

SEC. 3485. The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which, by its terms, it becomes due, or when that is a holiday, the next business day.

Presumptive dishonor of bill payable after sight.

SEC. 3486. A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

Apparent maturity of bill payable at sight.

SEC. 3487. The apparent maturity of a bill of exchange, payable at sight or on demand, is:

1. If it bears interest according to its terms one year after its date; or,

2. If it does not bear interest according to its terms ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Apparent maturity of note.

SEC. 3488. The apparent maturity of a promissory note, payable at sight, or on demand, is:

1. If it bears interest according to its terms, one year after its date; or,

2. If it does not bear interest according to its terms, six months after its date.

Same.

SEC. 3489. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

Surrender of instrument when a condition payment.

SEC. 3490. A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

1. That the instrument be surrendered to him unless it is lost or destroyed; or the holder has other claims upon it; or

2. If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying be written thereon; or

3. If the instrument is lost or destroyed, then that the holder give to him a bond; executed by himself and two sufficient sureties to indemnify him against any lawful claim thereon.

Dishonor, what.

SEC. 3491. A negotiable instrument is dishonored when it is either not paid, or not accepted according to its tenor, on presentment for the purpose, or without presentment where that is excused.

Notice, by whom given.

SEC. 3492. Notice of the dishonor of a negotiable instrument may be given:

1. By any holder thereof or his agent; or

2. By any party to the instrument who might be compelled to pay it to the holder, and who would upon taking it up, have a right to reimbursement from the party to whom the notice is given, or the agent of such party.

Form of notice.

SEC. 3493. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty and substantially informs the party receiving it that the instrument has been dishonored.

Notice, how served.

SEC. 3494. A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally at any place; or

2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or

3. By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the postoffice most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

Notice, how served after indorser's death.

SEC. 3495. In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or, if there are none, then to any member of his family who resided with him at his death; or, if there is none, then it must be mailed to his last place of residence as prescribed by subdivision 3 of the last section.

Notice given in ignorance of death valid.

SEC. 3496. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

Notice, when to be given.

SEC. 3497. Notice of dishonor when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

Notice of dishonor, when to be mailed.

SEC. 3498. When notice of dishonor is given by mail, it must be deposited in the postoffice in time for the first mail which closes afternoon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

SEC. 3499. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal. Notice, how given by agent.

SEC. 3500. Every party to a negotiable instrument, receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto. Additional time for notice by indorser.

SEC. 3501. A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto whose right to give the like notice has not then been lost. Effect of notice of dishonor.

SEC. 3502. Notice of dishonor is excused: Notice of dishonor, when excused.

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,
2. When there is no postoffice communication between the town of the party by whom the notice should be given and the town in which the place of residence or business of the party to be charged is situated; or,
3. When the party to be charged is the same person who dishonors the instrument; or,
4. When the notice is waived by the party entitled thereto.

SEC. 3503. Presentment and notice are excused as to any party to a negotiable instrument who informs the holder in writing within ten days before its maturity, that it will be dishonored. Presentment, etc., when excused.

SEC. 3504. If, before or after the maturity of an instrument, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused. Same.

SEC. 3505. Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence. Delay, when excused.

SEC. 3506. A waiver of presentment waives notice of dishonor also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment. Waiver of presentment and notice.

SEC. 3507. A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice. Waiver of protest.

CHAPTER II.

BILLS OF EXCHANGE.

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Bill of exchange, what.

SECTION 3520. A bill of exchange is an instrument negotiable in form, by which one who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

Drawee, in case of need.

SEC. 3521. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

When must be in a set.

SEC. 3522. An agreement to draw a bill of exchange, binds the drawer to execute it in three parts, if the other party to the agreement desires it.

Presentment, etc., part of set.

SEC. 3523. Presentment, acceptance or payment of a single part in a set of a bill of exchange, is sufficient for the whole.

Bill, where payable.

SEC. 3524. A bill of exchange is payable:

1. At the place where, by its terms, it is made payable; or

2. If it specify no place of payment, then at the place to which it is addressed; or

3. If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence (cannot) with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

Rights and obligations of drawer.

SEC. 3525. The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument.

Days of grace.

SEC. 3526. Days of grace are not allowed upon bills of exchange or promissory notes.

When a bill may be presented.

SEC. 3527. At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance and if acceptance is refused, the bill is dishonored.

SEC. 3528. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable: Presentment for acceptance, how made.

1. The bill must be presented by the holder or his agent;
2. It must be presented on a business day, and within reasonable hours;
3. It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein; and
4. The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance.

SEC. 3529. Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others. Presentment to joint drawees.

SEC. 3530. A bill of exchange which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored. Presentment made to drawee.

SEC. 3531. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice with ordinary diligence, to forward it for acceptance, unless presentment is excused. Presentment, when must be made.

SEC. 3532. An acceptance of a bill must be made in writing by the drawee, or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words. Acceptance, how made. Comp. laws, 653.

SEC. 3533. The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance. Holder entitled to acceptance on face of bill. Comp. laws, 653.

SEC. 3534. The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance: What acceptance sufficient with consent of holder.

1. An acceptance written upon any part of the bill, or upon a separate paper;
2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town which, if the acceptance was unqualified, it would be payable; or,
3. A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately without regard to its terms. Comp. laws, 653.

SEC. 3535. The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration. Acceptance by separate instrument. Comp. laws, 653.

SEC. 3536. An unconditional promise in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who, upon the faith thereof, has taken the bill for value or other good consideration. Promise to accept when equivalent to acceptance. Comp. laws, 653.

SEC. 3537. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder and before the holder has with the consent of the ac- Cancellation of acceptance.

ceptor transferred his title to another person who has given value for it upon the faith of such acceptance.

What is admitted by acceptance.

SEC. 3538. The acceptance of a bill of exchange admits the signature of the drawer, but it does not admit the signature of any indorsee to be genuine.

When bill may be accepted or paid for honor.

SEC. 3539. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

Holder of bill of exchange bound to accept payment for honor.

SEC. 3540. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

Acceptance for honor, how made.

SEC. 3541. The acceptor or payor for honor must write a memorandum upon the bill stating therein for whose honor he accepts or pays, and must give notice to such parties with reasonable diligence of the fact of such acceptance or payment. Having done so he is entitled to reimbursement from such parties and from all parties prior to them.

How enforced.

SEC. 3542. A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an endorser, after which the acceptor for honor must pay the bill.

Notice of dishonor not excused.

SEC. 3543. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

Presentment when bill not accepted, where made.

SEC. 3544. If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment it must be presented at the same place for payment, when presentment for payment is necessary.

Presentment of bill payable at particular place.

SEC. 3545. A bill of exchange accepted payable at a particular place, must be presented at that place for payment when presentment for payment is necessary, and need not be presented elsewhere.

Effect of delay in presentment in certain cases.

SEC. 3546. If a bill of exchange, payable at sight or on demand without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence be transmitted to the proper place for such presentment, the drawer and indorser are exonerated, unless such presentment is excused.

Effect in other cases.

SEC. 3547. Mere delay in presenting a bill of exchange or promissory note payable with interest at sight or on demand, does not exonerate any party thereto.

Presentment, when excused.

SEC. 3548. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

Delay, when excused.

SEC. 3549. Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

Presentment and notice, when excused.

SEC. 3550. Presentment of a bill of exchange for acceptance or payment and notice of its dishonor are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

Definitions.

SEC. 3551. An inland bill of exchange is one drawn and payable within this Territory. All others are foreign.

Protest necessary.

SEC. 3552. Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.

Protest, by whom made.

SEC. 3553. Protest must be made by a Notary Public, if with reasonable diligence one can be obtained; and if not, then by any reputable person, in the presence of two witnesses.

Protest, how made.

SEC. 3554. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and finally, protesting against all the parties to be charged.

Protest, where made.

SEC. 3555. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance and a protest for non-payment in the city or town in which it is presented for payment.

When made.

SEC. 3556. A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.

When excused.

SEC. 3557. The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

Notice, how given.

SEC. 3558. Notice of protest must be given in the same manner as notice of dishonor, and may be given by the Notary who makes the protest.

waiver of protest.

SEC. 3559. If a foreign bill of exchange on its face waives protest; notice of dishonor may be given to any party thereto in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

Declaration before payment for honor.

SEC. 3560. One who pays a foreign bill of exchange for honor, must declare before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

Damages allowed on dishonor of foreign bill. Comp. laws, 654.

SEC. 3561. Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this Territory, and protested for non-acceptance or non-payment.

Rate of damages.

SEC. 3562. Damages are allowed under the last section upon bills drawn upon any person:

1. If drawn upon any person in this Territory, two dollars upon each one hundred dollars of the principal sum specified in the bill;
2. If drawn upon any person out of this Territory, but in any of the states or other territories west of the Rocky Mountains, five dollars upon each one hundred dollars of the principal sum specified in the bill;
3. If drawn upon any person in the United States east of the Rocky Mountains, ten dollars upon each hundred dollars of the principal sum specified in the bill;
4. If drawn upon any person in any place in a foreign

country, fifteen dollars upon each hundred dollars of the principal sum specified in the bill.

Interest on amount of protested bill. Comp. laws, 651.

SEC. 3563. From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section.

Damages, how estimated. Comp. laws. 654.

SEC. 3564. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

Same 655.

SEC. 3565. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

CHAPTER III..

PROMISSORY NOTES.

SECTION
3575. Promissory note, what.
3576. Certain instruments promissory notes.

SECTION
3577. Bill of exchange, when converted into a note.
3578. Effect of delay in presentment.

Promissory note, what.

SECTION 3575. A promissory note is an instrument negotiable in form, whereby the signer promises to pay a specified sum of money.

Certain instruments promissory notes.

SEC. 3576. An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

Bill of exchange when converted into a note.

SEC. 3577. A bill of exchange, if accepted, with the consent of the owner by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

Effect of delay in presentment.

SEC. 3578. If a promissory note, payable on demand or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated unless such presentment is excused.

CHAPTER IV.

CHECKS.

SECTION
3590. Check, what.

SECTION
3591. Rules applicable to.

Check, what.

SECTION 3590. A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

Rules applicable to checks.

SEC. 3591. A check is subject to all the provisions of this Code concerning bills of exchange except that:

1. The drawer and endorsers are exonerated by delay in presentment only to the extent of the injury which they suffer thereby;

2. An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

CHAPTER V.

INSTRUMENTS MADE NEGOTIABLE BY INDORSEMENT.

SECTION
3600. Non-negotiable instruments may be transferred.
SECTION
3601. Liability of assignor.

SECTION 3600. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement transfers all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

Non-negotiable instruments may be transferred. 8 ses., 648.

SEC. 3601. Every assignor, his heirs, executors, or administrators, of every such instrument in writing, is liable to the action of the assignee thereof, his executors, or administrators, if such assignee has used diligence, by the institution and prosecution of a suit against the maker of such instrument, or against his heirs, executors, or administrators, for recovery of the money or property due thereon, or damages in lien thereof; but if the institution of such suit would have been unavailing, or the maker had absconded or left, or was absent from the Territory when such assigned instrument became due, or absconds within twenty days thereafter, such assignee, his heirs, executors or administrators, may recover against the assignor, or his heirs, executors, or administrators, as if due diligence by suit had been used. By "due diligence," shall be understood the institution of suit within sixty days after the maturity of the obligation.

Liability of assignor. Comp. laws, 649.

CHAPTER VI.

REDEMPTION OF COUNTY INDEBTEDNESS.

SECTION
3602. Funding county indebtedness. Classification of indebtedness. Bonds. Interest. Time and place of payment.
3603. Bonds and coupons, execution of recitals.
SECTION
3604. Notice of intention to issue. Register of bonds. Sale of bonds. Proceeds. Notice of redemption of indebtedness. Treasurer's record of bonds.
3605. Tax to pay bonds and interest. Property pledged for payment. Application of funds.
3606. Compensation of Treasurer.

SECTION 3602. The Board of County Commissioners of any county may issue negotiable coupon bonds of their county for the purpose of paying, redeeming, funding or refunding the principal and interest of any of the following indebtedness of their county, when same can be done, at a lower rate of interest and to the profit and benefit of the county.

Funding county indebtedness. 14 ses.

First. Any indebtedness contracted prior to July 30th, A.D. 1886.

Indebtedness classified.

Second. Any indebtedness contracted subsequent to July 30th, A.D. 1886. And all bonds issued under the provisions of this act must show, on their face, for which of the foregoing classes of indebtedness they are issued.

Said bonds shall be issued as near as practicable in denominations of one thousand dollars each, but bonds of the denominations of five hundred and one hundred dollars may

Bonds, denominations of.

Rate of interest. be issued when necessary. Said bonds must bear interest at a rate of not to exceed eight per cent per annum, to be paid When due. on the first day of January and the first day of July in each year, at the office of the county treasurer, or at such bank Place of payment. in the city of New York as may be designated by the Board of County Commissioners, at the option of the holder thereof; such bonds to be redeemed by the county in the following manner: Ten per cent of the total amount issued to be paid Time of payment. in ten years from the date of issue; and ten per cent annually thereafter until all of said bonds are paid, making the last bonds redeemable twenty years from the date of issue. But said bonds, or any part thereof, may, at the option of the county issuing the same, be redeemed at any time after five years from the date of their issue, provided such time and option be stated upon the face of each bond, and each bond must be redeemed in the order it is numbered.

Bonds and coupons. SEC. 3603. The bonds mentioned in section 3602 of this chapter, must have attached to each bond, when negotiated semi-annual interest coupons covering the interest expressed in the bond from the date of issue until paid; such bonds must be signed by the chairman of the Board of Signed and attested. County Commissioners, attested by the clerk of said board; and bear the seal of the Board of County Commissioners and countersigned by the County Treasurer of the county; and the coupons annexed to such bonds must be signed by the Treasurer of said county. Each coupon must have annexed to the same a number corresponding with the num- Recitals. ber of the bond, and each bond must state, upon its face, the amount for which the same is issued, to whom issued Chapter to be printed on bonds. and the date of issue; and must also recite that it is issued in conformity with the provisions of this chapter, and this chapter must be printed on the back of each bond.

Public notice. SEC. 3604. The said Board of County Commissioners must give notice by publication in some newspaper published in the county, if there be one, otherwise by three notices posted up in the county, one of which must be at the court house door, of its intention to issue and negotiate such Bidders. bonds, and invite bidders therefor, and after ascertaining the best terms upon and the lowest interest at which such Bonds prepared. bonds can be negotiated, must secure the proper engraving and printing thereof, and thereafter must have them consecutively numbered and otherwise properly prepared, and executed, and when so executed they must be by the Audi- Registry of bonds. tor registered in a public record book to be kept for that purpose; and therein must be stated the number, date, amount of bond, time and place of payment, rate of interest, number of coupons attached and any other proper description thereof for future identification; that then said board must from time to time in such amounts as it may deem best, de- Delivery to treasurer. liver said bonds to the County Treasurer, and take and file his receipt therefor, and charge him with all bonds so delivered, and any duties required of said board in pursuance of the provisions of this chapter may be performed at any general, special or called meetings thereof. The Treasurer must, Sale of bonds. under the general supervision of said board, sell said bonds for cash or exchange them for any of the county indebtedness for the redemption of which they were so issued, but in no case must said bonds be sold or exchanged for less than their face or par value and the accrued interest at time of disposal; nor must any county indebtedness be redeemed at more than its face value and any interest that may be due thereon. If any portion of said bonds are sold for money, the proceeds thereof must be applied exclusively toward the redemption of said county indebtedness for the redemption of which such bonds were issued. And the treasurer must give notice, as provided by law, of his readiness to redeem such indebtedness, and thereafter interest thereon shall cease. When the Treasurer redeems any county indebtedness he must endorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so redeemed, the time when and the amount for which redeemed, whether by money or the exchange of bonds, and the words "redeemed" and "cancelled." He must also keep a record of all bonds disposed of by him, showing their number, rate of interest, date and amount of sale, when, where and to whom payable; and if exchanged, for what, which record he must keep open for inspection for the public at all reasonable office hours. And he must make such detailed statements to and as often as required by said board, of all his transactions under the provisions of this chapter, and return to the board evidences of indebtedness, redeemed by him, cancelled as aforesaid.

Redemption of indebtedness.

Proceeds of bonds.

Notice of redemption.

Cancellation of warrants redeemed.

Treasurers record of bonds.

Statement to board.

SEC. 3605. The Board must cause to be levied annually upon all the taxable property of the county, in addition to other authorized taxes, a sufficient sum to pay the interest on all bonds disposed of in pursuance of the provisions of this chapter, and must at least one year before such bonds become due, and in time to provide the means for their payment, cause to be levied a sufficient additional sum to pay said bonds as they become due, and all such taxes must be levied, assessed and collected as other county taxes, until the bonds so issued are fully paid, including the interest thereof; the faith, credit, and all taxable property within the limits of the county as constituted at the time of such issue are, and must continue pledged, and the proper officer of the county must continue to assess and collect on all the taxable property within such limits, the necessary taxes to pay said bonds and interest thereon as the same becomes due; but the segregated territory must be relieved of such taxation when the county acquiring such territory pays to the county losing the same, the same proportion of the whole indebtedness of the county as the assessed value of the property in the segregated territory bears to the assessed value of the property in the whole county, as constituted before the division thereof. Should the tax for the payment of interest on any bonds issued under the provisions of this chapter, at any time not be levied or collected in time to meet such payment, the interest must be paid out of any moneys in the county general or current expense fund of the county, and the moneys so used for such payment of interest must be repaid to the fund from which so taken out of the first moneys collected from taxes.

Levy to pay bonds and interest.

Property pledged for payment.

Segregated territory.

Payment of interest out of general fund.

SEC. 3606. It shall be the duty of the county treasurer to apply the funds derived from the sale of the bonds to the payment of the indebtedness herein mentioned, and to no other purpose; and it shall be the duty of the county officials

Application of funds.

Application of tax

to levy, collect and apply the tax herein provided for the payment of interest and redemption of the principal of the bonds in the manner specified, and for no other purpose; and any failure to comply with the conditions of this chapter by the proper officers or any neglect or refusal to levy and collect any such tax, as aforesaid, shall be deemed a misdemeanor, and any county official guilty of the same must, upon conviction, be fined in an amount equal to the sum that should have been levied, or for any misappropriation he shall be fined in an amount equal to the sum so misappropriated, and imprisoned in the county jail for a term of not less than three months nor more than twelve months.

Penalty.

Compensation of treasurer.

SEC. 3607. The treasurers of the respective counties shall, for the services required of them by the provisions of this act, receive a compensation of not less than one-fourth of one per cent. nor more than one-half of one per cent, of the amount of bonds issued under the provisions of this act, and the Board of County Commissioners shall, at the time of issuing such bonds, fix the rate of compensation. and when such bonds are sold shall audit and allow the account of such treasurer.

[Act Jan. 25, 1887, in effect immediately.]

TITLE XIV.

NUISANCE.

CHAPTER I.

GENERAL PRINCIPLES.

SECTION
3620. Nuisance, what.
3621. Public nuisance.
3622. Private nuisance.
SECTION
3623. What not deemed a nuisance.
3624. Successive owners.
3625. Abatement does not preclude action.

SECTION 3620. Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park square, street, or highway, is a nuisance.

Nuisance, what.

SEC. 3621. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Public nuisance.

SEC. 3622. Every nuisance not included in the definition of the last section is private.

Private nuisance.

SEC. 3623. Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

What is not deemed a nuisance.

SEC. 3624. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property created by a former owner, is liable therefor in the same manner as the one who first created it.

Successive owners.

SEC. 3625. The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

Abatement does not preclude action.

CHAPTER II.

PUBLIC NUISANCES.

SECTION
3630. Lapse of time does not legalize.
3631. Abatement.
3632. Indictment.
SECTION
3633. Remedies for public nuisance.
3634. Action.
3635. How abated.

SECTION 3630. No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

Lapse of time does not legalize.

SEC. 3631. The remedies against a public nuisance are:

1. Indictment;
2. A civil action; or,
3. Abatement.

Abatement.

SEC. 3632. The remedy by indictment is regulated by the Penal Code.

Indictment.

SEC. 3633. A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise.

Remedies for public nuisance.

SEC. 3634. A public nuisance may be abated by any public body or officer authorized thereto by law.

Action in.

How abated.

SEC. 3635. Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

CHAPTER III.

PRIVATE NUISANCES.

SECTION
3640. Remedies for private nuisance.
3641. Abatement, when allowed.
SECTION
3642. When notice is required.

Remedies for private nuisance.

SECTION 3640. The remedies against a private nuisance are:

1. A civil action; or
2. Abatement.

Abatement, when allowed.

SEC. 3641. A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance without committing a breach of the peace, or doing unnecessary injury.

When notice required.

SEC. 3642. Where a private nuisance results from a mere omission of the wrong doer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

CODE OF CIVIL PROCEDURE

OF

IDAHO TERRITORY.

PART THIRD.—REMEDIAL.

CODE OF CIVIL PROCEDURE.

PRELIMINARY PROVISIONS.

SECTION
3800. Title of Part III of the Revised Statutes, and how cited.
SECTION
3801. Civil and criminal remedies not merged.

SECTION 3800. Part Third of these Revised Statutes shall be known as the Code of Civil Procedure of the Territory of Idaho, and whenever cited, enumerated, referred to, or amended, may be designated simply as the Code of Civil Procedure, adding, when necessary, the number of the section.

Title of Part III of statutes, and how cited.

SEC. 3801. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

Civil and criminal remedies not merged.

PART I.—COURTS OF JUSTICE.

TITLE I.

ORGANIZATION AND JURISDICTION.

CHAPTER I.

COURTS OF JUSTICE, IN GENERAL.

SECTION
3810. The several courts of this Territory.
SECTION
3811. Courts of Record.

SECTION 3810. The following are the Courts of Justice of this Territory:

The courts.

1. The Supreme Court;
2. The Districts Courts;
3. The Probate Courts;
4. The Justices' Courts.

SEC. 3811. The courts enumerated in the first three subdivisions of the preceding section are Courts of Record.

Courts of record.

CHAPTER II.

OF THE SUPREME COURT.

SECTION
3815. Jurisdiction of two kinds.
3816. Original jurisdiction.
3817. Appellate jurisdiction.
3818. May reverse, affirm, modify, etc., remittitur.
SECTION
3819. Number of Judges necessary for the transaction of business.
3820. Number to pronounce judgment.
3821. Terms, when held, additional terms.

Jurisdiction.

SECTION 3815. The jurisdiction of this court is of two kinds:

1. Original; and
2. Appellate.

Original jurisdiction.

SEC. 3816. Its original jurisdiction extends to the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its appellate jurisdiction.

Appellate jurisdiction.

SEC. 3817. Its appellate jurisdiction extends to a review of all cases removed to it under such regulations as are or may be prescribed by law, from the final decisions of the District Courts.

May reverse, affirm, or modify, etc., remittitur.

Decisions in writing.

SEC. 3818. The court may reverse, affirm, or modify any order or judgment appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. Its judgment must be remitted to the court from which the appeal was taken. The decisions of the court shall be given in writing; and in giving a decision, if a new trial be granted, the court shall pass upon, and determine all the questions of law involved in the case, presented upon such appeal, and necessary to the final determination of the case.

Presence of two justices.

SEC. 3819. The presence of two Justices is necessary for the transaction of business, but one of the Justices may adjourn the court from day to day with the same effect as if all were present.

Concurrence of two justices.

SEC. 3820. The concurrence of two Justices is necessary to pronounce a judgment; if two do not concur, the case must be reheard.

Terms of the supreme court.

SEC. 3821. There must be at least one term in each year for the hearing of causes, to be held at the capital of the Territory at such time as the court may by rule, or order, designate. Additional terms may also be held by order of the court.

CHAPTER III.

OF THE DISTRICT COURTS.

SECTION
3830. Jurisdiction.
3831. Duration of terms.
3832. Adjournment of the court.
SECTION
3833. Judgments may be entered in vacation.

Jurisdiction.

SEC. 3830. The jurisdiction of the District Courts extends:

1. To all civil actions for relief formerly given in Courts of Equity;
2. To all civil actions in which the subject of litigation is not capable of pecuniary estimation;
3. To all civil actions in which the subject of litigation is capable of pecuniary estimation, which involve the title or

possession of real estate; or the legality of any tax, unjust assessment, toll, or municipal fine, or in which the demand or the value of the property in controversy exceeds one hundred dollars;

4. To all special proceedings;
5. To the issuance of writs of mandate, review, prohibition, habeas corpus, and all writs necessary to the exercise of its powers;
6. To the trial of all indictments;
7. Its appellate jurisdiction extends to all cases arising in Probate or Justices' Courts; and to all other matters and cases wherein an appeal is allowed by law.

Duration of term.

SEC. 3831. Each term must be held until the business is disposed of, or until a day fixed for the commencement of some other term in the district.

Adjournments.

SEC. 3832. The court may adjourn from time to time during the term, and may, when the public convenience requires, adjourn the term over the time fixed by law for the commencement of another term in the same district.

Judgments and orders entered in vacation.

SEC. 3833. Judgments and orders of this court may be entered either in term or vacation.

CHAPTER IV.

OF THE PROBATE COURT.

SECTION
3840. Court in each county.
3841. Jurisdiction of.
3842. Presumptions in favor of its judgments.
SECTION
3843. Terms of the court in the respective counties.
3844. Terms, where held. Shall have a Clerk.

Court in each county.

SECTION 3840. There must be a Probate Court held in each of the counties.

Jurisdiction of probate court.

SEC. 3841. The Probate Court has jurisdiction:

1. To open and receive proof of last wills and testaments and to admit them to proof;
2. To grant letters testamentary of administration and of guardianship, and to revoke the same;
3. To appoint appraisers of estates of deceased persons;
4. To compel executors, administrators and guardians to render accounts;
5. To order the sale of property of estates, or belonging to minors;
6. To order the payment of debts due from estates;
7. To order and regulate all distributions of property or estates of deceased persons;
8. To compel the attendance of witnesses and the production of title deeds, papers and other property of an estate or of a minor;
9. To make such orders as may be necessary to the exercise of the powers conferred upon it.

In addition to their probate jurisdiction to hear and determine all civil causes wherein the damage or debt claimed does not exceed the sum of five hundred dollars, exclusive of interest, and concurrent jurisdiction with Justices of the Peace in criminal cases.

Presumptions as to probate proceedings.

SEC. 3842. The proceedings of this court are construed in the same manner and with like intendments as the proceedings of courts of general jurisdiction, and to its records, orders, judgments and decrees there is accorded like force, effect and legal presumptions as to the records, orders, judgments and decrees of District Courts, *Provided,* That this section shall be applicable to its probate proceedings, records, orders, judgments and decrees only.

Terms in the several counties.

SEC. 3843. The terms of the Probate Courts in the several counties for the transaction of all probate business, except that specially authorized by law to be done in vacation, must be held on the fourth Monday in each month. For the transaction of all civil, other than probate business, and all criminal business, these courts are always open.

Terms where held.

Clerk.

SEC. 3844. The terms of the Probate Courts must be held at the county seats. There shall be a Clerk of said Court to be appointed by the Judge thereof or the Probate Judge may act as Clerk of his own Court. Every Probate Judge shall be responsible upon his official bond, for every default or misconduct in office of his Clerk.

CHAPTER V.

OF JUSTICES' COURTS.

SECTION
3850. Justices of the Peace must hold.
3851. Civil jurisdiction.
3852. Civil jurisdiction restricted.

SECTION
3853. Territorial extent of civil jurisdiction.
3854. Criminal jurisdiction.

Justice must hold court where.

SECTION 3850. Every Justice of the Peace must hold a Justice's Court in the precinct or city for which he is elected or appointed.

Civil jurisdiction.

SEC. 3851. The civil jurisdiction of these courts within their respective precincts or cities extends:

1. To an action arising on contract, for the recovery of money only, if the sum claimed does not exceed three hundred dollars;

2. To an action for damages to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property, where no issue is raised by the answer involving the plaintiff's title, or possession of the same, if the damages claimed do not exceed three hundred dollars;

3. To an action for a fine, penalty or forfeiture, not exceeding three hundred dollars, given by statute or the ordinance of an incorporated city;

4. To an action upon a bond or undertaking conditioned for the payment of money not exceeding three hundred dollars, though the penalty exceed that sum; the judgment to be given for the sum actually due. When the payments are to be made by installments, an action may be brought for each installment as it becomes due;

5. To an action to recover the possession of personal property when the value of such property does not exceed three hundred dollars;

6. To take and enter judgment on the confession of a defendant, when the amount confessed does not exceed three hundred dollars.

Jurisdiction restricted.

SEC. 3852. The jurisdiction conferred by the last section shall not extend however to a civil action in which the title or possession of real property is put in issue.

Jurisdiction extends to county.

SEC. 3853. Mesne and final process of Justices' Courts may be issued to any part of the county in which they are held.

Criminal jurisdiction.

SEC. 3854. These courts have jurisdiction of the following public offenses, committed within the respective counties in which such courts are established:

1. Petit larceny;
2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his duties;
3. Breaches of the peace, riots, affrays, committing a willful injury to property, and all misdemeanors punished by fine not exceeding three hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

CHAPTER VI.

GENERAL PROVISIONS RESPECTING COURTS OF JUSTICE.

SECTION
3860. Sittings public.
3861. Limitation on preceding section.
3862. Powers of court respecting the conduct of judicial proceedings.
3863. Courts of record may make rules.
3864. When rules take effect.
3865. Days on which courts, etc., may be held.
3866. Days on which courts shall not be open.
3867. Court appointed, etc., for those days, deemed for next day.

SECTION
3868. Adjournment of court for absence of Judge.
3869. Same.
3870. Judge may, in certain cases, change place of holding court.
3871. Parties to appear at place appointed.
3872. Rooms, etc., when Judge may order.
3873. What courts have seals.
3874. Seals, by whom kept.
3875. To what procedings to be affixed.

Sittings public.

SECTION 3860. The sittings of every court of justice are public, except as provided in the next section.

Limitations on preceding section.

SEC. 3861. In an action for divorce, criminal conversation, seduction, or breach of promise of marriage, the court may direct the trial of any issue of fact joined therein to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel; *Provided*, That in any cause the court may, in the exercise of a sound discretion during the examination of a witness, exclude any and all witnesses in the cause.

Powers of court respecting the conduct of judicial proceedings.

SEC. 3862. Every court has power:

1. To preserve and enforce order in its immediate presence;
2. To enforce order in the proceedings before it or before a person or persons empowered to conduct a judicial investigation under its authority;
3. To provide for the orderly conduct of proceedings before it or its officers;
4. To compel obedience to its judgments, orders and process, and to the orders of a Judge out of court in an action or proceeding pending therein;
5. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto;
6. To compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this code;
7. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties;
8. To amend and control its process and orders, so as to make them conformable to law and justice.

Courts of record may make rules.

SEC. 3863. Every Court of Record may make rules not inconsistent with the laws of this Territory, for its own government and the government of its officers; but such rules must neither impose a tax or charge upon any legal proceeding nor give an allowance to any officer for services.

When rules take effect.

SEC. 3864. The rules adopted by the Supreme Court take effect sixty days, and those adopted by other courts, thirty days after their publication.

Days on which courts, etc., may be held.

SEC. 3865. The Courts of Justice may be held and judicial business be transacted on any day except as provided in the next section.

Days on which courts shall not be opened.

SEC. 3866. No court can be opened nor can any judicial business be transacted on Sunday, on the first day of January, on the fourth day of July, on Christmas or Thanksgiving day, or on a day on which the general election is held, except for the following reasons:

1. To give, upon their request, instructions to a jury when deliberating on their verdict;
2. To receive a verdict or discharge a jury;
3. For the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature; *Provided,* That in civil causes orders of arrest may be made and executed; writs of attachments, executions, injunctions and writs of prohibition may be issued and served; proceedings to recover possession of personal property may be had; and suits for the purpose of obtaining any such writs and proceedings may be instituted on any day.

Exceptions.

Court appointed, etc., for those days, deemed for next day.

SEC. 3867. If any of the days mentioned in the last section happen to be the day appointed for the holding of a court or to which it is adjourned, it is deemed appointed for, or adjourned to the next day.

Adjournment of court for absence of judge.

SEC. 3868. If no Judge attend on the day appointed for holding the court, or on the day to which it may have been adjourned, before noon, the Sheriff or Clerk must adjourn the court until the next day at ten o'clock A.M.; and if no Judge attend on that day before noon, the Sheriff or Clerk must adjourn the court until the following day at the same hour, and so on from day to day for one week, unless the Judge by written order directs it to be adjourned to some day certain fixed in said order, in which case it shall be so adjourned.

Same.

SEC. 3869. If no Judge attend for one week and no written order is made as provided in the last section, the Sheriff or Clerk shall adjourn the session until the time appointed for the holding of the next regular session.

Judge may, in certain cases, change place of holding court.

SEC. 3870. A Judge authorized to hold or preside at a court appointed to be held in a county, city or town, may, by an order filed with the Clerk and published as he may prescribe, direct that the court be held or continued at any other place in the city, town or county than that appointed, when war, insurrection, pestilence or any other public calamity or the danger thereof, or the destruction or danger of the building appointed for holding the court may render it necessary, and may in the same manner revoke the order, and in his discretion appoint another place in the same city, town or county for holding the court.

Parties to appear at place appointed.

SEC. 3871. When the court is held at a place appointed as provided in the last section, every person held to appear at the court must appear at the place so appointed.

Rooms, etc., when judge may order

SEC. 3872. If suitable rooms for holding the District Courts and the chambers of the Judges of such courts be not provided in any county by the Commissioners thereof, together with attendants, furniture, fuel, lights and stationery sufficient for the transaction of business, the court may direct the Sheriff of such county to provide such rooms, attendants, furniture, fuel, lights and stationery, and the expenses thereof are a charge against such county.

What courts have seals.

SEC. 3873. Each of the following courts has a seal:

1. The Supreme Court;
2. The District Courts;
3. The Probate Courts.

Seals, by whom kept.

SEC. 3874. The Clerk of the Court must keep the seal thereof.

Seal of court, to what proceedings affixed.

SEC. 3875. The seal of the court need not be affixed to any proceeding therein, or document except:

1. To a writ;
2. To the certificate of the probate of a will, or of the appointment of an executor, administrator or guardian;
3. To the authentication of a copy of a record or other proceeding of a court, or of an officer thereof, or of a copy of a document on file in the office of the Clerk.

TITLE II.

OF JUDICIAL OFFICERS.

CHAPTER I.

JUDICIAL OFFICERS IN GENERAL.

SECTION
3885. Places of residence of Judges.
3886. District Judges may hold courts in another district.

Residence of probate judge and justice.

SECTION 3885. Each Probate Judge shall reside at the county-seat of his county, and every Justice of the Peace shall reside in the precinct in which his court is held.

District judges may hold courts in another district.

SEC. 3886. A District Judge may hold a court in any county in this Territory upon the request of the Judge of the district in which such court is to be held; and when by reason of sickness or absence from the Territory, or from any other cause a court cannot be held in any county in a district by the Judge thereof, a certificate of that fact must be transmitted by the Clerk to the Governor, who may thereupon direct some other District Judge to hold such court.

CHAPTER II.

POWERS OF JUDGES AT CHAMBERS.

SECTION
3890. Powers of Judges at Chambers.

Powers of district judges at chambers.

SECTION 3890. District Judges, at Chambers, may grant all orders and writs which are usually granted in the first instance upon ex parte applications, and may, at Chambers, hear and dispose of such writs and of motions for new trials, and try and determine writs of review, mandate and prohibitions, and may hear applications to discharge all such orders and writs. In case of vacancy in the office of any District Judge, or his absence from the Territory, motions may be made before and orders granted by any other District Judge.

CHAPTER III.

DISQUALIFICATION OF JUDGES.

SECTION
3900. When disqualified.
3901. Not to act as attorney in his own Court.
3902. Certain Judges not to act as attorneys.
3903. No judicial officer to have a partner.

When disqualified.

SECTION 3900. A Judge cannot act as such in any of the following cases:

1. In an action or proceeding to which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law;

3. When he has been attorney or counsel for either party in the action or proceeding. But this section does not apply to the arrangement of the calendar or the regulation of the

order of business, nor to the power of transferring the cause to another county.

SEC. 3901. A Judge cannot act as attorney or counsel in a court in which he is Judge, or in an action or proceeding removed therefrom to another court for trial or review, or in an action or proceeding from which an appeal may lie to his own court.

Not to act as attorney in his own court.

SEC. 3902. A Justice of the Supreme Court, or Judge of the District Court, cannot act as attorney or counsel in any court, except in an action or proceeding to which he is a party on the record.

Certain judges not to act as attorneys.

SEC. 3903. No Judge or other judicial officer, shall have a partner acting as attorney or counsel in any court of this Territory.

No judicial officer to have a partner.

CHAPTER IV.

INCIDENTAL POWERS AND DUTIES OF.

SECTION
3910. Of judicial officers.
3911. General powers of Judges out of court.
SECTION
3912. Powers of judicial officers as to conduct of proceedings before them.
3913. Same.
3914. Same.

SECTION 3910. A Judge may exercise, out of court, all the powers expressly conferred upon a Judge, as contradistinguished from the court.

General powers of judges out of court.

SEC. 3911. Every judicial officer has power:

Powers of judicial officers as to conduct proceedings before them.

1. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of an official duty;
2. To compel obedience to his lawful orders, as provided in this code;
3. To compel the attendance of persons to testify in a proceeding before him, in the cases and manner provided in this code;
4. To administer oaths to persons in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and duties.

SEC. 3912. For the effectual exercise of the powers conferred by the last section, a judicial officer may punish for contempt, in the cases provided in this code.

Same.

SEC. 3913. The Justices of the Supreme Court, and the Judges of the District Courts, have power in any part of the Territory, and Probate Judges and Justices of the Peace within their respective counties, to take and certify:

Same.

1. The proof and acknowledgment of a conveyance of real property or of any other written instrument;
2. The acknowledgment of a satisfaction of a judgment of any court;
3. An affidavit or deposition to be used in this Territory.

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS.

SECTION
3920. Subsequent applications for orders, when prohibited.
3921. Violations of last section.
3922. No proceedings affected by a vacancy in office of Judge, etc.
3923. Proceedings to be in the English language.
3924. Abbreviations and figures.
3925. Means to be used to execute judicial powers in certain cases.

Subsequent applications for orders, when prohibited.

SECTION 3920. If an application for an order, made to a Judge of a court in which the action or proceeding is pending, is refused, in whole or in part, or is granted conditionally, no subsequent application for the same order can be made to any other Judge, except of a higher court; but nothing in this section applies to motions refused for any informality in the papers or proceedings necessary to obtain the order or to motions refused, with liberty to renew the same.

Violations of last section.

SEC. 3921. A violation of the last section may be punished as a contempt, and an order made contrary thereto may be revoked by the Judge who made it, or vacated by a Judge of the court in which the action or proceeding is pending.

No proceeding affected by a vacancy in office of judge, etc.

SEC. 3922. No proceeding in any court of justice in an action or special proceeding pending therein, is affected by a vacancy in the office of all or any of the Judges, or by the failure of a term thereof.

Proceedings to be in the English language.

SEC. 3923. Every written proceeding in a Court of Justice in this Territory shall be in the English language, and judicial porceedings shall be conducted, preserved and published in no other.

Abbreviations and figures.

SEC. 3924. Such abbreviations as are in common use may be used, and numbers may be expressed by figures or numerals, in the customary manner.

Means to be used to execute judicial powers in certain cases.

SEC. 3925. When jurisdiction is, by this code or by any other statute, conferred on a court or judicial officer all the means *necessary* to carry it into effect are also given; and in the exercise of the jurisdiction if the course of proceedings be not specially pointed out by this code, *or the Statute*, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

TITLE III.

OF JURORS.

SECTION
3935. Jury defined.
3936. Different kind of juries.
3937. Grand jury defined.
3938. Trial jury defined.
3939. Number of a trial jury.
3940. Jury of inquest defined.
3941. Who are competent to act as jurors.
3942. Who are not competent to act as jurors.
3943. Who are exempt
3944. Firemen exempt.
3945. Who may be excused.
3946. Exempt juror may file affidavit.
3947. List of persons to serve as jurors to be made by Commissioners.
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3949. List to be placed with Clerk.
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3952. Jury to be drawn upon the order of the Judge.
3953. Clerk to notify County Judge and Sheriff of time of drawing.
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3955. Drawing, when to be adjourned.
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SECTION
3957. Drawing how conducted.
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3960. Sheriff to summon jurors, how.
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3963. Jurors for Probate and Justice's Courts, by whom summoned.
3964. How summoned.
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3966. Manner of summoning juries of inquest.
3967. Obedience to summons, how enforced.
3968. Grand jury, when to be impaneled.
3969. Grand jury, how constituted.
3970. Jury to be impaneled as prescribed by law.
3971. Names of trial jurors, how kept.
3972. Trial juries, how impaneled.
3973. Impaneling jury in Justices' Courts.
3974. In criminal cases.
3957. Juries of inquest, how impaneled.

SECTION 3935. A jury is a body of men temporarily selected from the citizens of a particular district and invested with power to present or indict a person for a public offense or to try a question of fact.

Jury defined

SEC. 3936. Juries are of three kinds:

Different kinds of juries.

1. Grand juries;
2. Trial juries;
3. Juries of inquest.

SEC. 3937. A grand jury is a body of men, sixteen in number, returned in pursuance of law from citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county.

Grand jury defined.

SEC. 3938. A trial jury is a body of men returned from the citizens of a particular district before a court or officer of competent jurisdiction, and sworn to try and determine by a unanimous verdict a question of fact.

Trial jury defined.

SEC. 3939. A trial jury in the district consists of twelve, and in the Probate and Justices' Courts, of six men, unless the parties to the action or proceeding agree upon a less number.

Number of trial jury.

SEC. 3940. A jury of inquest is a body of men summoned from the citizens of a particular district, before the Sheriff, Coroner or other ministerial officer to inquire of particular facts.

Jury of inquest defined.

SEC. 3941. A person is competent to act as a juror if he be:

Who are competent to act as jurors.

1. A citizen of the United States and an elector of the county;
2. In possession of his natural faculties and not decrepit;
3. Possessed of sufficient knowledge of the language in which the proceedings of the courts are held.

Who are not competent to act as jurors.

SEC. 3942. A person is not competent to act as a juror:

1. Who does not possess the qualifications prescribed by the preceding section;

2. Who has been convicted of a felony or misdemeanor involving moral turpitude.

Who are exempt.

SEC. 3943. A person is exempt from liability to act as a juror if he be:

1. A judicial, civil or military officer of the United States or of the Territory of Idaho;

2. A person holding a county office;

3. An attorney and counsellor at law;

4. A minister of the gospel or a priest of any denomination;

5. A teacher in a college, academy or school;

6. A practicing physician;

7. An officer, keeper or attendant of an almshouse, hospital, asylum, or other charitable institution;

8. Engaged in the performance of duty as officer or attendant of a county jail or the Territorial prison;

9. An express agent, mail carrier, telegraph operator, telephone agent, or keeper of a public ferry or toll gate;

10. A dispensing druggist of a prescription drug store;

11. A superintendent, engineer, conductor, fireman, or station agent of a railroad;

12. A person drawn as a juror in the District Court, and who has served as such within a year; but this exemption shall not apply to a person who is summoned on a special venire, or to serve as a juror in the Probate or Justices' Court.

Firemen exempt. 13 ses., 120.

SEC. 3944. Twenty regularly enrolled active members of any fire department for every thousand inhabitants of the town or city where such fire department is located, and exempt from jury duty, and the Chief Engineer or Foreman of the Department must designate from the active members, and the County Recorder must issue certificates of exemption for one year to the number of active members so exempt.

Who may be excused.

SEC. 3945. A juror cannot be excused by the court for slight or trivial cause, or for hardship, or inconvenience to his business, but only when material injury or destruction to his property, or that of the public intrusted to him is threatened, or when his own health or the sickness or death of a member of his family, requires his absence.

May transmit affidavit of excuse.

SEC. 3946. If a person exempt from liability to act as a juror, as provided in section 3943, be summoned as a juror, he may make and transmit his affidavit to the clerk of the court for which he is summoned, stating his office, occupation or employment; and such affidavit shall be delivered by the Clerk to the Judge of the court when the name of such person is called, and, if sufficient in substance, it shall be received as an excuse for non-attendance in person. The affidavit shall then be filed by the Clerk.

List of persons to serve.

SEC. 3947. The Board of Commissioners of each county must, at their first regular meeting in each year, or at any other meeting, if neglected at the first, make a list of persons to serve as jurors in the District Court of the county, for the ensuing year.

How selection made.

SEC. 3948. They must proceed to select and list from the poll lists of the several precincts in their respective counties, last returned to the clerk of their Board, the names of one hundred and fifty persons competent to serve as jurors; and in making such selection, they must take the names of such only as are not exempt from serving, who are in possession of their natural faculties, and not infirm or decrepit, of fair character, of approved integrity, and of sound judgment; *Provided,* That if, in any of the counties, the County Commissioners shall not be able to select the number required by this section, for jurors, they may select a less number and the highest possible.

List to be placed with clerk.

SEC. 3949. Certified lists of the persons selected to serve as jurors must at once be placed in the possession of the Clerk of the District Court.

Duty of clerk on receiving list.

SEC. 3950. On receiving such lists, the Clerk must file the same in his office, and write down the names contained therein on separate pieces of paper, of the same size and appearance, and fold each piece so as to conceal the name thereon, and deposit them in a box to be called the "jury-box."

Regular jurors to serve one year.

SEC. 3951. The persons whose names are so returned are known as regular jurors, and must serve for one year, and until other persons are selected and returned.

Jury to be drawn upon order of the judge.

SEC. 3952. Not less than fifteen nor more than thirty days before the commencement of any term of the District Court, the Judge thereof, if a jury will be required therefor, must make and file with the Clerk an order that one be drawn. The number to be drawn must be fixed in the order; if to form a grand jury, it must be twenty days, and if a trial jury, such number as the Judge may direct.

Clerk to notify judge and sheriff of time of drawing.

SEC. 3953. At least one day before the drawing, the Clerk must notify the Sheriff and Probate Judge of the time when such drawing will take place, which time must not be more than three days after the receipt by him of the order for such drawing.

Sheriff and judge to witness drawing.

SEC. 3954. At the time so appointed, the Sheriff, in person or by deputy, and the Probate Judge, must attend at the Clerk's office to witness such drawing, and if they do so, the Clerk must, in their presence, proceed to draw the jurors.

Drawing when to be adjourned.

SEC. 3955. If the officers so notified do not appear, the Clerk must adjourn the drawing until the next day, and, by written notice, require two electors of the county to attend such drawing on the adjourned day.

Shall proceed when.

SEC. 3956. If, at the adjourned day, the Sheriff, Probate Judge, and electors, or any two of such persons, appear, the Clerk must in their presence proceed to draw the jurors.

Drawing how conducted.

SEC. 3957. The Clerk must conduct such drawing as follows:

1. He must shake the box containing the names of jurors returned to him, from which jurors are required to be drawn, so as to mix the slips of paper upon which such names were written, as much as possible;

2. He must then publicly draw out of the box as many such slips of paper as are ordered by the Judge;

3. A minute of the drawing must be kept by one of the attending officers in which must be entered the names con-

tained on every slip of paper so drawn, before any other slip is drawn;

4. If after drawing the whole number required, the name of any person has been drawn who is dead or insane, or who has permanently removed from the county, to the knowledge of the Clerk or any other attending officer, an entry of such fact must be made in the minute of the drawing, and the slip of paper containing such name must be destroyed;

5. Another name must then be drawn, in place of that contained on the slip of paper so destroyed, which must in like manner, be entered in the minutes of the drawing;

6. The same proceeding must be had as often as may be necessary, until the whole number of jurors required are drawn;

7. The minute of the drawing must then be signed by the Clerk and the attending officers or persons, and filed in the Clerk's office;

8. Separate lists of the names of the persons so drawn for trial jurors, and of those drawn for grand jurors, specifying for what court they were drawn, must be made and certified by the Clerk and the attending officers or persons, and delivered to the Sheriff of the county;

9. If both a grand and petit jury are ordered at the same drawing, the grand jury shall be drawn first.

After adjournment of court disposition to be made of ballots.

SEC. 3958. After the adjournment of any court at which jurors have been returned as herein provided, the Clerk must inclose the ballots containing the names of those who attended and served as jurors in an envelope under seal, and the ballots of those who did not attend and serve must be returned to the jury box. The ballots sealed in envelopes must not be returned to the jury box.

Copy of list to be furnished by clerk.

SEC. 3959. The Clerk of the District Court must furnish any person applying therefor and paying the fees allowed by law for the same, a copy of the list of jurors drawn to attend any court.

Sheriff to summon jurors, how.

SEC. 3960. As soon as he receives the list of jurors drawn, the Sheriff must summon the persons named therein to attend by giving personal notice to each, or by leaving a written notice at his place of residence, with some person of proper age, and must return the list to the court at the time fixed in the order for their appearance, specifying the names of those who are summoned and the manner in which each person was notified. The grand jurors shall be summoned to appear on the first day of the term, at the hour of eleven o'clock in the forenoon, and the trial jurors on such day of the term, and at such hour as the presiding Judge of the court may by order direct.

Court may order jury drawn, when.

SEC. 3961. Whenever jurors are not drawn and summoned to attend any court of record, or a sufficient number of jurors fail to appear, such court may, in its discretion, order a sufficient number to be drawn and summoned to attend such court; or it may, by an order entered on its minutes, direct the Sheriff of the county to summon so many good and lawful men of his county to serve as jurors as the case may require. And in either case such jurors must be summoned in the manner provided by the preceding section.

SEC. 3962. When there are not competent jurors enough present to form a panel, the court may direct the Sheriff or other proper officer to summon a sufficient number of persons having the qualifications of jurors, to complete the panel from the body of the county or from the bystanders, and the Sheriff must summon the number so ordered, accordingly, and return the names to the court. The jurors summoned under this or the preceding section, may be required to appear forthwith or at a time to be named in the order, as the court may direct, and the officer summoning such jurors shall return the order as hereinbefore provided.

When jury may be completed from the body of the county, or from the bystanders.

SEC. 3963. When jurors are required in any Probate or Justice's Court, they must, upon the order of the Judge or Justice thereof, be summoned by the Sheriff, Marshal or Constable of the jurisdiction.

Jurors for probate and justices court, by whom summoned.

SEC. 3964. Such jurors must be summoned from the persons resident of the city or precinct competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

How summoned.

SEC. 3965. The officer summoning such jurors must, at the time fixed in the order for their appearance, return the venire with a list of the persons summoned indorsed thereon.

Officers return.

SEC. 3966. Juries of inquest must be summoned by the officer before whom the proceedings are had, or any Sheriff or Constable, from the persons resident of the county competent to serve as jurors, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

How summoned.

SEC. 3967. Any juror summoned who willfully and without reasonable excuse, fails to attend, may be attached and compelled to attend, and the court may also impose a fine not exceeding one hundred dollars, upon which execution may issue. If the juror was not personally served, the fine must not be imposed until, upon an order to show cause, an opportunity has been offered the juror to be heard.

Obedience to summons, how enforced.

SEC. 3968. At the opening of each regular term of the District Court (unless otherwise directed by the Judge), and as often thereafter as to the Judge may seem proper, a grand jury may be impaneled.

Grand jury when to be impaneled.

SEC. 3969. Sixteen persons shall constitute a grand jury, twelve of whom shall constitute a quorum, and when of the jurors summoned, no more nor less than sixteen attend they shall constitute the grand jury. If more than sixteen attend the Clerk must call over the list summoned, and the sixteen first answering shall constitute the grand jury. If less than sixteen attend, the panel may be filled to sixteen as provided in section 3961.

Grand jury how constituted.

SEC. 3970. Thereafter such proceedings shall be had in impaneling the grand jury as are prescribed by the criminal practice.

How impaneled.

SEC. 3971. At the time when the order for the trial jurors was made returnable, or as soon thereafter as convenient, the Clerk, under the direction of the court must call the names of those summoned, and the court may then hear the excuses of jurors summoned.

Names of trial jurors, how kept.

The Clerk must then write the names of jurors present, and not excused, upon separate slips or ballots of paper, and fold such slips so the names are concealed, and then in the presence of the court, deposit the slips or ballots in a box, which must kept sealed until ordered by the court to be opened.

Jury to be impaneled as prescribed, how.

SEC. 3972. When thereafter an action is called for trial by the jury, such proceedings shall be had in impaneling the trial jury as are prescribed in this code.

Proceedings in forming jury in courts not of record.

SEC. 3973. At the time appointed for a jury trial, in Probate or Justices' Courts, the list of jurors summoned shall be called. If a sufficient number of jurors are in attendance, the Probate Judge or Justice may proceed to impanel the jury. When there are not competent jurors enough present to form a panel the Judge or Justice may direct the proper officer to summon a sufficient number of persons, having the qualifications of jurors to complete the panel and such officer must summon the number so ordered, accordingly and return the same into court forthwith or at such time as may be designated in the order.

In criminal cases.

SEC. 3974. Thereafter, if the action is a criminal one, the jury must be impaneled as provided by the statutes relating thereto. If a civil one as provided by this code.

Mode and manner of impaneling juries inquest.

SEC. 3975. The mode and manner of impaneling juries of inquest are provided for in the provisions of the different statutes relating to such inquests.

TITLE IV.

ATTORNEYS AND COUNSELORS AT LAW.

SECTION
3990. Who may be admitted as attorneys.
3991. Qualifications.
3992. Certificate of admission. License.
3993. Oath.
3994. Attorneys of other States and Territories.
3995. Roll of Attorneys.
3996. Penalty for practicing without license.
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4000. Notice of change.
4001. Death or removal of attorney.
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SECTION
4003. Conviction of felony. Moral turpitude.
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4007. Citation to answer.
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4009. How to answer.
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4011. Answer.
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Who may be admitted as attorneys.

SECTION 3990. Any white male citizen, or white male person, resident of this Territory, who has bona fide declared his intention to become a citizen in the manner required by law: of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all courts of this Territory.

Qualifications of attorney and counselors.

SEC. 3991. Every applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character, and, except as hereinafter provided, undergo a strict examination in open court as to his qualifications, by the Justices of the Supreme court; *Provided*, That the several District Courts of this Territory may admit applicants to practice as attorneys and counselors in their respective courts upon like testimonials and examination.

Certificate of admission, license.

SEC. 3992. If, upon such examination in the Supreme Court, the applicant is found qualified, the court shall admit him as attorney and counselor in all the courts of this Territory, and shall direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the Clerk of the Court, which certificate is his license.

Oath, etc.

SEC. 3993. Every person, before receiving license to practice law, shall take the oath prescribed by law, and shall pay to the Territorial Treasurer the sum of twenty-five dollars for the use of the Territorial Library Fund, and the Clerk of the Court shall require of the person so admitted the receipt of the said Treasurer, before issuing such license, and in no case shall the oath be administered or the license issued until such receipt is produced and filed in the office of the Clerk.

Attorney of other States and Territory, amended.

SEC. 3994. The examination may be dispensed with in the case of a person who has been admitted attorney and counselor, and is still in good standing as such, in the highest court of any State or other Territory, and his affidavit of such admission and standing, showing the county, State or Territory, the name of the court, and the time when such admission was obtained, or his license showing the same, shall be deemed sufficient to entitle him to admission, with affidavit of such standing.

Roll of attorneys.

SEC. 3995. Each Clerk must keep a roll of attorneys and counselors admitted to practice by the court of which he is Clerk, which roll must be signed by the person admitted before he receives a license.

Penalty for practicing without license.

SEC. 3996. If any person shall practice law in any court, except a Justice's Court, without having received a license as attorney and counselor, he is guilty of a contempt of court.

General duties.

SEC. 3997. It is the duty of an attorney and counselor:

1. To support the constitution and laws of the United States and of this Territory;

2. To maintain the respect due to the Courts of Justice and judicial officers;

3. To counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just, except the defense of a person charged with a public offense;

4. To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the Judges by an artifice or false statement of fact or law;

5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client;

6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

7. Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest;

8. Never to reject for any consideration personal to himself the cause of the defenseless or the oppressed.

Authority of attorney.

SEC. 3998. An attorney and counselor has authority:

1. To bind his client in any of the steps of an action or proceeding, by his agreement filed with the Clerk, or entered upon the minutes of the court and not otherwise;

2. To receive money claimed by his client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of his authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Change of attorney.

SEC. 3999. The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon his own consent, filed with the Clerk, or entered upon the minutes;

2. Upon the order of the court or Judge thereof, upon the application of the client, after notice to the attorney.

Notice of change.

SEC. 4000. When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he must recognize the former attorney.

Death or removal of attorney.

SEC. 4001. When an attorney dies, or is removed or suspended, or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or to appear in person.

SEC. 4002. An attorney and counselor may be removed or suspended by the Supreme Court and by the District Courts for either of the following causes, arising after his admission to practice:

Removal or suspension.

1. His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

2. Willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession, and any violation of the oath taken by him or his duties as such attorney and counselor;

3. Corruptly and without authority, appearing as attorney for a party to an action or proceeding;

4. Lending his name to be used as an attorney and counselor by any other person who is not an attorney and counselor;

5. Failure for ten days after written demand, and payment or tender of the fees and expenses due him from his client to pay over or deliver any money or other property belonging to his client, which he shall have received in his office of attorney or counselor in the course of collection or settlement of any claim or demand.

Amended.

In all cases where an attorney is removed or suspended by a District Court, the judgment or order of removal or suspension, may be reviewed on appeal, by the Supreme Court.

SEC. 4003. In case of the conviction of an attorney or counselor of a felony, or misdemeanor involving moral turpitude, the Clerk of the Court in which a conviction is had, must, within thirty days thereafter, transmit to the Supreme Court a certified copy of the record of conviction.

Conviction of felony, moral turpitude.

SEC. 4004. The proceedings to remove or suspend an attorney and counselor under the first sub-division of section 4002, must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under the second sub-division of section 4002, may be taken by the court for matters within its knowledge, or may be taken upon the information of another.

Proceedings for removal or suspension.

SEC. 4005. If the proceedings are upon the information of another, the accusation must be in writing.

Accusation.

SEC. 4006. The accusation must state the matters charged, and be verified by the oath of some person to the effect that the charges therein contained are true.

Verification.

SEC. 4007. After receiving the accusation the court must, if in its opinion the case requires it, make an order requiring the accused to appear and answer the accusation at a specified time in the same or subsequent term, and must cause a copy of the order and of the accusation to be served upon the accused within a prescribed time before the day appointed in the order.

Citation to answer.

SEC. 4008. The accused must appear at the time appointed in the order and answer the accusation, unless for sufficient cause the court assign another day for that purpose; if he does not appear, the court may proceed and determine the accusation in his absence.

Appearance.

SEC. 4009. The accused may answer to the accusation either by objecting to sufficiency or denying it.

How to answer.

Demurrer. SEC. 4010. If he object to the sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection. If he deny the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

Answer. SEC. 4011. If an objection to the sufficiency of the accusation be not sustained, the accused must answer within such time as may be designated by the court.

Trial. SEC. 4012. If the accused plead guilty, or refuse to answer the accusation, the court must proceed to judgment of removal or suspension. If he deny the matters charged, the court must, at such time as it may appoint, proceed to try the accusation.

Reference. SEC. 4013. The court may, in its discretion, order a reference to a committee to take depositions in the matter.

Judgment. SEC. 4014. Upon conviction, in cases arising under the first subdivision of section 4002, the judgment of the court must be that the name of the party must be stricken from the roll of attorneys and counselors of the court, and that he be precluded from practicing as such attorney or counselor in all the courts of this Territory, and upon conviction in cases under the other subdivisions of that section, the judgment of the court may be according to the gravity of the offense charged—deprivation of the right to practice as an attorney or counselor in the courts of this Territory, permanently, or for a limited period.

PART II.—CIVIL ACTIONS.

TITLE I.

OF THE FORM OF CIVIL ACTIONS.

SECTION
4020. One form of civil action only.
4021. Parties to action, how designated.
4022. Special issues not made by pleadings, how tried.

SECTION 4020. There is in this Territory but one form of civil actions for the enforcement or protection of private rights and the redress or prevention of private wrongs; *Provided*, That in all matters not regulated by this code, in which there is any conflict or variance between the rules of equity jurisprudence and the rules of the common law, with reference to the same matter, the rules of equity shall prevail.

One form of civil action only. Amended.

SEC. 4021. In such actions the party complaining is known as the plaintiff, and the adverse party as the defendant.

Parties to actions how designated.

SEC. 4022. A question of fact not put in issue by the pleadings may be tried by a jury upon an order for the trial, stating distinctly and plainly the question of fact to be tried; and such order is the only authority necessary for a trial.

Special issues not made by pleadings, how tried.

TITLE II.

OF THE TIME OF COMMENCING CIVIL ACTIONS.

CHAPTER I.

IN GENERAL.

SECTION
4030. Commencement of civil actions.

Commencement of civil actions.

SECTION 4030. Civil actions can only be commenced within the periods prescribed in this Title, after the cause of action shall have accrued, except when in special cases, a different limitation is prescribed by statute.

CHAPTER II.

FOR THE RECOVERY OF REAL PROPERTY.

SECTION
4035. When the people will not sue.
4036. Seizin within five years when necessary in action for real property.
4037. Such seizin when necessary in action or defense arising out of title to or rents of real property.
4038. Entry on real estate.
4039. Possession when presumed. Occupation deemed under legal title, unless adverse.
4040. Occupation under written instrument or judgment, when deemed adverse.
SECTION
4041. What constitutes adverse possession under written instrument or judgment.
4042. Premises actually occupied under claim of title deemed to be held adversely.
4043. What constitutes adverse possession under claim of title not written.
4044. Relation of landlord and tenant as affecting adverse possession.
4045. Right of possession not affected by descent caste.
4046. Certain disabilities excluded from time to commence actions.

When the people will not sue.

SECTION 4035. The people of this Territory will not sue any person for or in respect to any real property or the issues or profits thereof, by reason of the right or title of the people to the same unless:

1. Such right or title shall have accrued within ten years before any action or other proceeding for the same is commenced; or

2. The people or those from whom they claim, shall have received the rents and profits of such real property, or of some part thereof within the space of ten years.

Seizin within five years, when necessary in action for real property.

SEC. 4036. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the property in question within five years before the commencement of the action; and this section includes possessory rights to lands and mining claims.

Such seizin when necessary in action or defense arising out of title to or rent of real property.

SEC. 4037. No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual unless it appears that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor, of such person was seized or possessed of the premises in question within five years before the commencement of the act in respect to which such action is prosecuted or defense made.

Entry on real estate.

SEC. 4038. No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years of the time when the right to make it descended or accrued.

Possession when presumed.

SEC. 4039. In every action for the recovery of real property, or the possession thereof, a person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by another person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action.

Occupation deemed under title, unless adverse.

Occupation under written instrument or judgment, when deemed adverse.

SEC. 4040. When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim, for five years, the property so included is deemed to have been held adversely except that when it consists of a tract divided into lots, the possession of one lot, is not deemed a possession of any other lot of the same tract.

What constitutes adverse possession under written instrument or judgment.

SEC. 4041. For the purpose of constituting an adverse possession by a person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;

2. Where it has been protected by a substantial inclosure;

3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;

4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Premises actually occupied under claim of title deemed to be held adversely.

SEC. 4042. Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

What constitutes adverse possession under claim of title not written.

SEC. 4043. For the purpose of constituting an adverse possession, by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure;

2. Where it has been usually cultivated or improved.

Provided, however, That in no case shall adverse possession be considered established under the provisions of any sections of this Code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, territorial, county, or municipal, which have been levied and assessed upon such land according to law.

Relation of landlord and tenant as affecting adverse possession.

SEC. 4044. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods herein limited.

Right of possession not affected by descent caste.

SEC. 4045. The right of a person to the possession of real property is not impaired or affected by a descent caste in consequence of the death of a person in possession of such property.

Certain disabilities excluded from time to commence actions.

SEC. 4046. If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title first descends or accrues, either:

1. Within the age of majority; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution, upon conviction of a criminal offense, for a term less than for life; or,
4. A married woman, and her husband be a necessary party with her in commencing such action or making such entry or defense;

The term during which such disability continues is not deemed any portion of the time in this title limited for the commencement of such action or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period.

CHAPTER III.

FOR THE RECOVERY OF PROPERTY OTHER THAN REAL.

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4050. Periods of limitation prescribed.
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4052. Within five years.
4053. Within four years.
4054. Within three years.
4055. Within two years.
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SECTION
4059. Action for a deposit.
4060. Actions for relief not hereinbefore provided for.
4061. Actions by the people subject to the limitations of this Title.
4062. Action to redeem a mortgage without account of rents and profits.
4063. Same, when there are two or more such mortgages.

Periods of limitations prescribed.

SECTION 4050. The periods prescribed for the commencement of actions other than for the recovery of real property, are as follows:

Within six years.

SEC. 4051. Within six years:

1. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States;

2. An action for mesne profits of real property.

Within five years.

SEC. 4052. Within five years:

An action upon any contract, obligation, or liability founded upon an instrument in writing.

Within four years.

SEC. 4053. Within four years:

An action upon a contract, obligation, or liability, not founded upon an instrument of writing.

Within three years.

SEC. 4054. Within three years:

1. An action upon a liability created by statute, other than a penalty or forfeiture;

2. An action for trespass upon real property;

3. An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property;

4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

Within two years.

SEC. 4055. Within two years:

1. An action against a Sheriff, Coroner, or Constable, upon the liability incurred by the doing of an act in his official capacity, and in virtue of his office, or by the omission of an official duty, including the non-payment of money collected upon an execution;

2. An action upon a statute for a penalty or forfeiture. where the action is given to an individual, or to an individual and the Territory, except where the statute imposing it prescribes a different limitation;

3. An action upon a statute or upon an undertaking in a criminal action for a forfeiture or penalty to a county or to the people of the Territory;

4. An action to recover damages for the death of one caused by the wrongful act of another;

5. An action for libel, slander, assault, battery, false imprisonment or seduction;

6. An action against a Sheriff or othor officer, for the escape of a prisoner arrested or imprisoned on civil process.

Within one year.

SEC. 4056. Within one year:

An action against an officer or officer *de facto:*

1. To recover any goods, wares, merchandise, or other property seized by any such officer in his official capacity as tax collector, or to recover the price or value of any goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention, sale of or injury to, any goods, wares, merchandise, or other personal property seized, or for damages done to any person or property in making any such seizure;

2. For money paid to any such officer under protest, or seized by such officer in his official capacity as a collector of taxes, and which, it is claimed, ought to be refunded.

Within six months.

SEC. 4057. Actions on claims against a county which have been rejected by the Board of Commissioners, must be commenced within six months after the first rejection thereof by such Board.

Where cause of action accrues on mutual account.

SEC. 4058. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side.

No limitation.

SEC. 4059. To actions brought to recover money or other property deposited with any bank, banker, trust company, or savings and loan society, no limitation begins to run until after an authorized demand.

Actions for relief not hereinbefore provided for.

SEC. 4060. An action for relief not hereinbefore provided for, must be commenced within four years after the cause of action shall have accrued.

Actions by the people subject to the limitations of this title.

SEC. 4061. The limitations prescribed in this Title, apply to actions brought in the name of the Territory, or for the benefit of the Territory, in the same manner as to actions by private parties.

Action to redeem a mortgage without account of rents and profits.

SEC. 4062. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under him, against the mortgagee in possession, or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for five years after breach of some condition of the mortgage.

Same, when there are two or more such mortgages.

SEC. 4063. If there is more than one such mortgagor, or more than one person claiming under a mortgagor, some of whom are not entitled to maintain such an action under the provisions of this Title, any one of them who is entitled to maintain such an action, may redeem therein a divided or undivided part of the mortgaged premises, according as his interest may appear, and have an accounting for a part of the rents and profits proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money, bearing the same proportion to the whole of such money as the value of his divided or undivided interest in the premises, bears to the whole of such premises.

CHAPTER IV.

GENERAL PROVISIONS.

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4068. When an action is commenced.
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SECTION
4075. Disability must exist when right of action accrued.
4076. When two or more disabilities exist, etc.
4077. This Title not applicable to actions against directors, etc. Limitations in such cases prescribed.
4078. Acknowledgment or new promise must be in writing.
4079. Limitation laws of other states, effect of.
4080. Word "action", construed how.

When an action is commenced.

SECTION 4068. An action is commenced within the meaning of the title, when the complaint is filed.

Exception, where defendant is out of the Territory.

SEC. 4069. If, when the cause of action accrues against a person, he is out of the Territory, the action may be commenced within the term herein limited, after his return to the Territory, and if, after the cause of action accrues, he departs from the Territory, the time of his absence is not part of the time limited for the commencement of the action.

Exception, as to persons under disabilities.

SEC. 4070. If a person entitled to bring an action, other than for the recovery of real property, be, at the time the cause of action accrued, either:

1. Within the age of majority; or
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; or,
4. A married woman, and her husband be a necessary party with her in commencing such action:

The time of such disability is not a part of the time limted for the commencement of the action.

Provision where person entitled dies before limitation expires.

SEC. 4071. If a person entitled to bring an action die before the expiration of the term limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that time, and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced against his representatives, after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

In suits by aliens, time of war to be deducted.

SEC. 4072. When a person is an alien subject, or citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of the action.

Provision where judgment has been reversed.

SEC. 4073. If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his representatives may commence a new action within one year after the reversal.

Provision where action is stayed by injunction.

SEC. 4074. When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

Disability must exist when right of action accrued.

SEC. 4075. No person can avail himself of a disability, unless it existed when his right of action accrued.

When two or more disabilities exist, etc.

SEC. 4076. When two or more disabilities co-exist at the time the right of action accrues, the limitation does not attach until they are removed.

This title not applicable to actions against directors, etc., limitations in such cases prescribed.

SEC. 4077. This Title does not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

Acknowledgment or new provisions must be in writing.

SEC. 4078. No acknowledgment or promise is sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this Title, unless the same is contained in some writing, signed by the party to be charged thereby.

Limitation laws of other States and Territories, effect of.

SEC. 4079. When a cause of action has arisen in another state or territory, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in this Territory, except in favor of one who has been a citizen of this Territory, and who has held the cause of action from the time it accrued.

Word "action" construed how.

SEC. 4080. The word "action" as used in this Title, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

TITLE III.

OF THE PARTIES TO CIVIL ACTIONS.

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4112. Associates may be sued by name of association.
4113. Court, when to decide controversy or to order other parties to be brought in.

SECTION 4090. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by this Code.

Action to be in name of party in interest.

SEC. 4091. In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any set-off, or other defense existing at the time of, or before, notice of the assignment; but this section does not apply to a negotiable instrument, transferred in good faith and upon good consideration, before maturity.

Assignment of a thing in action not to prejudice defense, amended.

SEC. 4092. An executor, or administrator, or trustee of an express trust, or a person expressly authorized by statute may sue without joining with him the persons for whose benefit the action is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust, within the meaning of this section.

Executor, trustee, may sue without joining the persons beneficially interested.

SEC. 4093. When a married woman is a party, her husband must be joined with her, except:

Married woman as party.

1. When the action concerns her separate property, or her right or claim to the homestead property, she may sue alone;
2. When the action is between herself and her husband, she may sue or be sued alone;
3. When she is living separate and apart from her husband, by reason of his desertion of her, or by agreement in writing entered into between them, she may sue or be sued alone.

Married woman as party.

SEC. 4094. If a husband and wife be sued together, the wife may defend her own right, and if the husband neglect to defend, she may defend for his right also.

Wife may defend, when.

SEC. 4095. When an infant, or an insane or incompetent person is a party, he must appear either by his general guardian, or by a guardian *ad litem* appointed by the court in which the action is pending in each case, or by a judge

Infant, etc., to appear by guardian.

thereof, or a Probtae Judge. A guardian *ad litem* may be appointed in any case, when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to represent the infant, insane or incompetent person in the action or proceeding, notwithstanding he may have a general guardian and may have appeared by him.

Guardian, how appointed.

SEC. 4096. When a guardian *ad litem* is appointed by the court or judge, he must be appointed as follows:

1. When the infant is plaintiff; upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relative or friend of the infant;

2. When the infant is defendant; upon the application of the infant, if he be of the age of fourteen years and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant;

3. When an insane or incompetent person is party to an action or proceeding, upon the application of a relative or friend of such insane or incompetent person, or of any other party to the action or proceeding.

Unmarried female may sue for her own seduction.

SEC. 4097. An unmarried female may prosecute, as plaintiff, an action for her own seduction, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

Father, etc., may sue for seduction of daughter, etc.

Amended.

SEC. 4098. A father, or, in case of his death or desertion of his family, the mother, may prosecute as plaintiff for the seduction of a daughter, under the age of majority at the time of the seduction, and the guardian for the seduction of a ward, under the age of majority at the time of the seduction, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

Who may sue for injury and death of child.

SEC. 4099. A father, or in case of his death or desertion of his family, the mother, may maintain an action for the injury or death of a minor child, and a guardian for the injury or death of his ward, when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death, or if such person be employed by another person, who is responsible for his conduct, also against such other person.

When representatives may sue.

Damages.

SEC. 4100. When the death of a person, not being a minor, is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death; or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case may be just.

Who may be joined as plaintiffs.

SEC. 4101. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this code.

Who may be joined as defendants.

SEC. 4102. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. And in an action to determine the title or right of possession to real property which, at the time of the commencement of the action, is in the possession of a tenant, the landlord may be joined as a party defendant.

Defendants in action to determine adverse claims.

SEC. 4103. In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making such adverse claim and persons in possession may be joined as defendants; and if the judgment be for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action against whom the judgment has passed.

Claimants under a common source of title, may unite.

SEC. 4104. Any two or more persons claiming any estate or interest in lands under a common source of title, whether holding as tenants in common, joints tenants, coparceners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, for the purpose of determining such adverse claim, or of establishing such common source of title, or of declaring the same to be held in trust, or of removing a cloud upon the same.

Parties in interest when to be joined.

SEC. 4105. Of the parties to the action, those who are united in interest must be joined as plaintiffs, or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

When one or more may sue or defend for the whole.

Plaintiff may sue in one action, the different parties to commercial paper.

SEC. 4106. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all or any of them be included in the same action, at the option of the plaintiff.

Tenants in common, etc., may sever in bringing or defending actions.

SEC. 4107. All persons holding as tenants in common, joint tenants, or coparceners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

Action, when not to abate.

SEC. 4108. An action or proceeding does not abate by the death or any disability of a party, or by the transfer of any interest therein, if the cause of action or proceedings survive or continue. In case of the death or any disability of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

Substitution.

Another person may be substituted for the defendant.

SEC. 4109. A defendant against whom an action is pending upon a contract, or for specific personal property, may, at any time before answer, upon affidavit that a person not a party to the action makes against him, and without any collusion with him, a demand upon the same contract, or for the same property, upon notice to such person and the adverse party, apply to the court for an order to substitute such person in his place, and discharge him from liability to either party, on his depositing in court the amount claimed on the contract, or delivering the property or its value, to such person as the court may direct; and the court may, in its discretion, make the order.

Conflicting claims, interpleader, amended.

SEC. 4110. Whenever conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation, or any portion thereof, such person may bring an action against the conflicting claimants to compel them to interplead and litigate their several claims among themselves. The order of substitution may be made, and the action of interpleader may be maintained, and the applicant or plaintiff be discharged from liability to all or any of the conflicting claimants, although their titles or claims have not a common origin, or are not identical, but are adverse to and independent of one another.

Substitution.

Intervention, when, and how.

SEC. 4111. Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding any thing adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court, and served upon the parties to the action or proceeding who have not appeared and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

Associates may be sued by name of association.

SEC. 4112. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, in the same manner as if all had been named defendants and had been sued upon their joint liability.

Court when to decide controversy or to order other parties to be brought in.

SEC. 4113. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court must then order them to be brought in, and thereupon the party, directed by the court, must cause to be served a copy of the summons in the action, and the order aforesaid, in like manner as provided for the service of the summons, upon each of the parties ordered to be brought in, who shall have ten pays or such time as the court may order, after service in which to appear and plead; and in case such party fail to adpear and plead within the time aforesaid, the court may cause his default to be entered and proceed as in other cases of default, or make such other order as the condition of the action and justice shall require, and when, in an action for the recovery of real or personal property, a person not a party to the action, but having an interest in the subject thereof, makes application to the court to be made a party, it may order him to be brought in by the proper amendment.

TITLE IV.

OF THE PLACE OF TRIAL OF CIVIL ACTIONS.

SECTION
4120. Certain actions to be tried where the subject or some part thereof is situated.
4121. Other actions, where the cause or some part thereof arose.
4122. Place of trial of actions against counties.
4123. Other actions according to the residence of the parties.
SECTION
4124. Action may be tried in any county unless the defendant demands a trial in the proper county.
4125. Place of trial may be changed in certain cases.
4126. When judge is disqualified, cause to be transferred.
4127. Papers to be transmitted. Costs, etc. Jurisdiction, etc.
4128. Proceedings after judgment in certain cases transferred.

Certain actions to be tried where the subject or some part thereof is situated

SECTION 4120. Actions for the following causes must be tried in the county in which the subject of the action or some part thereof, is situated, subject to the power of the court to change the place of trial, as provided in this code:

1. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest and for injuries to real property;

2. For the partition of real property;

3. For the foreclosure of a mortgage of real property. Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties, and the county so selected is the proper county for the trial of such action.

Other actions where the cause or some part thereof arose.

SEC. 4121. Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial:

1. For the recovery of a penalty or forfeiture imposed by statute, except, that when it is imposed for an offense committed on a lake, river or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offense was committed;

2. Against a public officer, or person specially appointed to execute his duties, for any act done by him in virtue of his office; or against a person who, by his command or in his aid, does anything touching the duties of such officer.

Amended.
Place of trial of actions against counties.

SEC. 4122. An action against a county may be commenced and tried in such county, unless such action is brought by a county, in which case it may be commenced and tried in any county, not a party thereto.

Other actions according to the residence of the parties.

SEC. 4123. In all other cases the action must be tried in the county in which the defendants, or some of them reside at the commencement of the action; or, if none of the defendants reside in the Territory, or, if residing in this Territory, the county in which they reside is unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint; and if the defendant is about to depart from the Territory, such action may be tried in any county where either of the parties reside or service is had; subject, however, to the power of the court to change the place of trial as provided in this Code.

Action may be tried in any county, unless the defendant demand a trial in the proper county.

SEC. 4124. If the county in which the action is commenced is not the proper county for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he appears and answers or demurs, files an affidavit of merits, and demands, in writing, that the trial be had in the proper county.

Place of trial may be changed in certain cases.

SEC. 4125. The court may, on motion, change the place of trial in the following cases:

1. When the county designated in the complaint is not the proper county;
2. When there is reason to believe that an impartial trial cannot be had therein;
3. When the convenience of witnesses and the ends of justice would be promoted by the change;
4. When from any cause the judge is disqualified from acting.

When judge is disqualified, cause must be transferred.

SEC. 4126. If an action or proceeding is commenced or pending in a court, and the Judge or Justice thereof is disqualified from acting as such, or if for any cause the court orders the place of trial to be changed, it must be transferred for trial to a court the parties may agree upon by stipulation in writing, or made in open court and entered in the minutes; or, if they do not so agree, then to the nearest court where the like objection or cause for making the order does not exist, as follows:

1. If in the District Court, to another District Court;
2. If in the Probate Court, to the District Court of the same county;
3. If in a Justice's Court, to another Justice's Court in the same county.

Papers to be transmitted.

Costs, etc.

Jurisdiction, etc.

SEC. 4127. When an order is made transferring an action or proceeding for trial, the Clerk of the Court, or Justice of the Peace, must transmit the pleadings and papers therein to the Clerk or Justice of the Court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

Proceedings after judgment in certain cases transferred.

SEC. 4128. When an action or proceeding affecting the title to or possession of real estate has been brought in or transferred to any court of a county other than the county in which the real estate, or some portion of it, is situated, the Clerk of such Court must, after final judgment therein, certify, under his seal of office, and transmit to the corresponding court of the county in which the real estate affected by the action is situated, a copy of the judgment. The Clerk receiving such copy must file, docket, and record the judgment in the records of the court, briefly designating it as a judgment transferred from ——— court, (naming the proper court.)

TITLE V.

OF THE MANNER OF COMMENCING CIVIL ACTIONS.

SECTION
4138. Actions, how commenced.
4139. Complaint, how indorsed. When summons may be issued and how waived.
4140. Summons, how issued, directed and what to contain.
4141. Alias summons.
4142. Notice of the pendency of an action affecting the title of real property.
4143. Summons, how served and returned.
4144. Summons, how served.

SECTION
4145. Publication when the defendant is absent from the Territory, concealed, or a foreign corporation having no agent, etc.
4146. Manner of publication and appointment of attorney.
4147. Proceedings, where there are several defendants and part only are served.
4148. Proof of service, how made.
4149. When jurisdiction of action acquired.

Actions how commenced.

SECTION 4138. Civil actions in the courts of this Territory are commenced by filing a complaint.

Indorsement of complaint. Summons. Waiver of summons.

SEC. 4139. The Clerk must indorse on the complaint the day, month and year that it is filed, and at any time within one year thereafter, the plaintiff may have a summons issued; and if the action be brought against two or more defendants who reside in different counties, may have a summons issued for each of such counties. But at any time within the year after the complaint is filed, the defendant may, in writing, or by appearing and answering or demurring, waive the issuing of summons; or, if the action be brought upon a joint contract of two or more defendants, and one of them has appeared within the year, the other or others may be served or appear after the year, at any time before trial.

Summons, how issued, directed, and what to contain.

SEC. 4140. The summons must be directed to the defendant, signed by the Clerk, and issued under the seal of the court and must contain:

1. The names of the parties to the action, the court in which it is brought, and the county in which the complaint is filed;

2. A statement of the nature of the action in general terms;

3. A direction that the defendant appear and answer the complaint within ten days, if the summons is served within the county in which the action is brought; within twenty days if served out of the county, but in the district in which the action is brought, and within forty days if served elsewhere;

4. In an action arising on contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum demanded in the complaint [stating it];

5. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded in the complaint. The name of the plaintiff's attorney must be indorsed on the summons.

Alias summons.

SEC. 4141. If the summons is returned without being served on any or all the defendants, the clerk, upon the demand of the plaintiff, may issue an alias summons in the same form as the original.

Constructive notice of pendency of action, how given. Amended.

SEC. 4142. In an action affecting the title or the right of possession of real property, the plaintiff at the time of filing the complaint, and the defendant at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may file for record with the recorder of the county in which the property or some part thereof is situated, a notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or incumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

Summons, how served and returned.

SEC. 4143. The summons may be served by the Sheriff of the county where the defendant is found, or by any other person over the age of eighteen, not a party to the action. A copy of the complaint must be served with the summons, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. When the summons is served by the Sheriff, it must be returned with his certificate of its service, and of the service of any copy of the complaint when such copy is served, to the office of the clerk from which it issued. When it is served by any other person, it must be returned to the same place, with an affidavit of such person of its service, and of the service of a copy of the complaint, when such copy is served.

Summons, upon whom served.

SEC. 4144. The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this Territory to the president or other head of the corporation, secretary, cashier, or managing agent thereof;
2. If the suit is against a foreign corporation, or a nonresident joint stock company or association, doing business and having a managing or business agent, cashier or secretary within this Territory to such agent, cashier, or secretary, or to any station, ticket or other agent of such corporation transacting business thereof in the county where the action is commenced, and if there is no such agent in said county, then service may be had upon any such agent in any other county;
3. If against a minor under the age of fourteen years residing within this Territory; to such minor, personally, and also to his father, mother, or guardian; or if there be none within this Territory, then to any person having the care or control of such minor, or with whom he resides or in whose service he is employed;
4. If against a person residing within this Territory who has been judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed; to such person and also to his guardian;
5. If against a county, city or town; to the chairman of the Board of Commissioners, president of the council, or trustees or other head of the legislative department thereof;
6. In all other cases to the defendant personally.

Publication when the defendant is absent from the Territory, concealed, or a foreign corporation, having no agent, etc.

SEC. 4145. When the person on whom the service is to be made resides out of the Territory, or has departed from the Territory, or cannot, after due diligence, be found within the Territory, or conceals himself to avoid the service of summons, or is a foreign corporation having no managing or business agent, cashier, or secretary within the Territory, and the fact appears by affidavit to the satisfaction of the court or a judge thereof, or a Probate Judge, and it also appears by such affidavit, or by the verified complaint on file that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action, such court or Judge may make an order that the service be made by the publication of the summons.

Service by publication how made.

SEC. 4146. The order must direct the publication to be made in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week; but publication against a defendant residing out of the Territory or absent therefrom, must not be less than one month. In case of publication, where the residence of a non-resident or absent defendant is known, the court or judge must direct a copy of the summons and complaint to be forthwith deposited in the postoffice, directed to the person to be served at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint out of the Territory, is equivalent to publication and deposit in the postoffice; and in either case the service of the summons is complete at the expiration of the time prescribed by the order for publication.

Proceedings when there are several defendants and part only are served.

SEC. 4147. When the action is against two or more defendants jointly or severally liable on a contract and the summons is served on one or more but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

Proof of service, how made.

SEC. 4148. Proof of the service of summons and complaint must be as follows:

1. If served by the Sheriff, his certificate thereof;
2. If by any other person, his affidavit thereof; or,
3. In case of publication, the affidavit of the printer, or his foreman or principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons in the postoffice if the same has been deposited; or,
4. The written admission of the defendant. In case of service otherwise than by publication, the certificate or affidavit must state the time and place of service.

Jurisdiction, when acquired · appearances.

SEC. 4149. From the time of the service of the summons and of a copy of a complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication, when service by publication is ordered, the court is deemed to have acquired jurisdiction of the parties and to have control of all the subsequent proceedings. The voluntary appearance of a defendant is equivalent to personal service of the summons and copy of the complaint upon him.

TITLE VI.

OF THE PLEADINGS IN CIVIL ACTIONS.

CHAPTER I.

IN GENERAL.

SECTION
4160. Definition of pleadings.
4161. This code prescribes the form and rules of pleadings.
SECTION
4162. What pleadings are allowed.

SECTION 4160. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

Definition of pleadings.

SEC. 4161. The forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings is to be determined, are those prescribed in this code.

This code prescribes the form and rules of pleadings.

SEC. 4162. The only pleadings allowed on the part of the plaintiff are:

What pleadings are allowed.

1. The complaint;
2. The demurrer to the answer;

And on the part of the defendant:

1. The demurrer to the complaint;
2. The answer.

CHAPTER II.

THE COMPLAINT.

SECTION
4167. Complaint, first pleading.
4168. Complaint, what to contain.
SECTION
4169. What causes of action may be joined.

SECTION 4167. The first pleading on the part of the plaintiff is the complaint.

Complaint first pleading.

SEC. 4168. The complaint must contain:

Complaint, what to contain.

1. The title of the action, the name of the court and county in which the action is brought, and the names of the parties to the action;
2. A statement of the facts constituting the cause of action, in ordinary and concise language;
3. A demand of the relief which the plaintiff claims; if the recovery of money or damages be demanded, the amount thereof must be stated.

SEC. 4169. The plaintiff may unite several causes of action in the same complaint, where they all arise out of:

What causes of action may be joined.

1. Contracts, express or implied;
2. Claims to recover specific real property, with or without damages for the withholding thereof, or for waste committed thereon, and the rents and profits of the same;
3. Claims to recover specific personal property, with or without damages for the withholding thereof;
4. Claims against a trustee by virtue of a contract, or by operation of law;
5. Injuries to character;
6. Injuries to person;
7. Injuries to property.

The causes of action so united must all belong to one only of these classes, and must affect all the parties to the action and not require different places of trial, and must be separately stated; but an action for malicious arrest and prosecution, or either of them, may be united with an action for either an injury to the character or to the person.

CHAPTER III.

DEMURRER TO THE COMPLAINT.

SECTION
4174. When defendant may demur.
4175. Demurrer must specify, etc. May be taken to part. May answer and demur at the same time.
SECTION
4176. What proceedings are to be had when complaint is amended.
4177. Objection not appearing on complaint, may be taken by answer.
4178. Objections, when deemed waived.

When defendant may demur.

SECTION 4174. The defendant may demur to the complaint within the time required in the summons to answer, when it appears on the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,
2. That the plaintiff has not legal capacity to sue; or,
3. That there is another action pending between the same parties for the same cause; or,
4. That there is a defect or misjoinder of parties, plaintiff or defendant; or,
5. That several causes of action have been improperly united; or,
6. That the complaint does not state facts sufficient to constitute a cause of action; or,
7. That the complaint is ambiguous, unintelligible or uncertain.

Demurrer must specify, etc.

May be taken to part, may answer and demur at same time.

SEC. 4175. The demurrer must distinctly specify the grounds upon which any of the objections to the complaint are taken. Unless it do so it may be disregarded. It may be taken to the whole complaint or to any of the causes of action stated therein, or the defendant may demur and answer at the same time.

What proceedings are to be had when complaint is amended.

SEC. 4176. If the complaint is amended, a copy of the amendments must be filed, or the court may, in its discretion, require the complaint, as amended, to be filed; and a copy of the amendments or amended complaint, must be served upon the defendants affected thereby. The defendant must answer the amendment or the complaint as amended, within ten days after service thereof, or such other time as the court may direct, and judgment by default may be entered upon failure to answer, as in other cases.

Objection not appearing on complaint, may be taken by answer.

SEC. 4177. When any of the matters enumerated in section 4174 do not appear upon the face of the complaint, the objection may be taken by answer.

Objections, when deemed waived.

SEC. 4178. If no objection be taken, either by demurrer or answer, the defendant must be deemed to have waived the same excepting only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

CHAPTER IV.

THE ANSWER.

SECTION
4183. Answer, what to contain.
4184. When counter claim may be set up.
4185. When defendant omits to set up counter claim.
4186. Counter claim not barred by death or assignment.
SECTION
4187. Answer may contain several grounds of defense. Defendant may answer part and demur to part of complaint.
4188. Cross-complaint.

Answer, what to contain.

SECTION 4183. The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint controverted by the defendant;

2. A statement of any new matter constituting a defense or counter claim. If the complaint be verified, the denial of each allegation controverted must be specific, and be made positively, or according to the information and belief of the defendant. If the defendant has no information or belief upon the subject sufficient to enable him to answer an allegation of the complaint, he may so state in his answer, and place his denial on that ground. If the complaint be not verified a general denial is sufficient, but only puts in issue the material allegations of the complaint.

When counter claim to be set up.

SEC. 4184. The counter claim mentioned in the last section must be one existing in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of one of the following causes of action:

1. A cause of action arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action;

2. In an action arising upon contract; any other cause of action arising also upon contract and existing at the commencement of the action.

When defendant omits to set up counter claim.

SEC. 4185. If the defendant omit to set up a counter claim in the cases mentioned in the first subdivision of the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

Cross demands deemed compensated.

SEC. 4186. When cross demands have existed between persons under such circumstances that, if one had brought an action against the other, a counter claim could have been set up, the two demands shall be deemed compensated, so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

Answer may contain several grounds of defense.

SEC. 4187. The defendant may set forth by answer as many defenses and counter claims as he may have. They must be separately stated, and the several defenses must refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint and demur to the residue.

Defendant may answer part and demur to part of complaint.

SEC. 4188. Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by per-

Cross-complaint.

mission of the court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint.

CHAPTER V.

DEMURRER TO THE ANSWER.

SECTION
4193. When plaintiff may demur to answer.
SECTION
4194. Grounds of demurrer.

Demurrer to answer.

SECTION 4193. The plaintiff may, within the same length of time after service of the answer as the defendant is allowed to answer after service of summons, demur to the answer of the defendant, or to one or more of the several defenses or counter claims set up in the answer.

Grounds of demurrer.

SEC. 4194. The demurrer may be taken upon one or more of the following grounds:

1. That several causes of counter claim have been improperly joined;
2. That the answer does not state facts sufficient to constitute a defense or counter claim;
3. That the answer is ambiguous, unintelligible or uncertain.

CHAPTER VI.

VERIFICATION OF PLEADINGS.

SECTION
4199. Verification of pleadings.
4200. Copy of written instrument contained in complaint admitted, unless answer is verified.
SECTION
4201. When defense is founded on written instrument set out in answer, its execution admitted, unless denied by plaintiff under oath.
4202. Exceptions to rules, prescribed by two preceding sections.

Verification of pleadings

SECTION 4199. Every pleading must be subscribed by the party or his attorney; and when the complaint is verified, or when the Territory, or any officer of the Territory, in his official capacity, is plaintiff, the answer must be verified unless an admission of the truth of the complaint might subject the party to a criminal prosecution, or unless an officer of the Territory, in his official capacity, is defendant. In all cases of a verification of a pleading, the affidavit of the party must state that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters, that he believes it to be true; and where a pleading is verified, it must be by the affidavit of a party, unless the parties are absent from the county where the attorney resides, or from some cause unable to verify it, or the facts are within the knowledge of his attorney, or other person verifying the same. When the pleading is verified by the attorney, or any other person except one of the parties, he must set forth in the affidavit the reasons why it is not made by one of the parties. When a corporation is a party, the verification may be made by any officer thereof.

Amended

Copy of written instrument contained in complaint admitted, unless answer is verified.

SEC. 4200. When an action is brought upon a written instrument, and the complaint contains a copy of such instrument, or a copy is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the answer denying the same be verified.

Genuineness of instrument how controverted.

SEC. 4201. When the defense to an action is founded on written instrument, and a copy thereof is contained in the answer, or is annexed thereto, the genuineness and due execution of such instrument are deemed admitted, unless the plaintiff file with the Clerk, within ten days after receiving a copy of the answer, an affidavit denying the same, and serve a copy thereof on the defendant.

Exceptions to rules prescribed by two preceding sections.

SEC. 4202. But the execution of the instruments mentioned in the two preceding sections, is not deemed admitted by a failure to deny the same under oath, if the party desiring to controvert the same, is, upon demand, refused an inspection of the original. Such demand must be in writing, served by copy, upon the adverse party or his attorney, and filed with the papers in the case.

CHAPTER VII.

GENERAL RULES OF PLEADING.

SECTION
4207. Pleadings to be liberally construed.
4208. Sham and irrelevant answers, etc., may be stricken out.
4209. How to state an account in pleadings.
4210. Description of real property in a pleading.
4211. Judgments, how pleaded.
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SECTION
4215. Libel and slander, how stated in complaint. Not necessary to allege or prove special damages.
4216. Answer in such cases.
4217. Allegations not denied; when to be deemed true; when to be deemed controverted.
4218. A material allegation defined.
4219. Supplemental complaint and answer.
4220. Pleadings subsequent to complaint. must be filed and served.

Pleadings to be liberally construed.

SECTION 4207. In the construction of a pleading for the purpose of determining its effect, its allegations must be liberally construed with a view to substantial justice between the parties.

Sham and irrelevant answers, etc., may be stricken out.

SEC. 4208. Sham and irrelevant answers, and irrelevant and redundant matter inserted in a pleading, may be stricken out, upon such terms as the court may in its discretion, impose.

How to state an account in pleadings.

SEC. 4209. It is not necessary for a party to set forth in pleading the items of an account therein alleged, but he must deliver to the adverse party within ten days after a demand thereof in writing, a copy of the account, or be precluded from giving evidence thereof. The court or a Judge thereof, may order a further account when the one delivered is too general or is defective in any particular.

Description of real property in a pleading.

SEC. 4210. In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

Judgments, how pleaded.

SEC. 4211. In pleading a judgment or other determination of a court, officer or board, it is not necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading must establish on the trial the facts conferring jurisdiction.

Condition precedent, how to be pleaded.

SEC. 4212. In pleading the performance of conditions precedent in a contract, it is not necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part, and if such allegation be controverted, the party pleading must establish on the trial the facts showing such performance.

Statute of limitations, how pleaded.

SEC. 4213. In pleading the statute of limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of section———(giving the number of the section and subdivision thereof, if it is so divided, relied upon) of the code of civil procedure; and if such allegation be controverted, the party pleading must establish on the trial the facts showing that the cause of action is so barred.

Private statute, how pleaded.

SEC. 4214. In pleading a private statute or a right derived therefrom, it is sufficient to refer to such statute by its title and the day of its passage.

Libel and slander, how stated in complaint.

Not necessary to allege or prove special damages.

SEC. 4215. In an action for libel or slander, it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it is sufficient to state, generally, that the same was published or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff must establish on the trial that it was so published or spoken.

Answer in such cases.

SEC. 4216. In the actions mentioned in the last section, the defendant may in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Allegations not denied, when to be deemed true, when to be deemed controverted.

SEC. 4217. Every material allegation of the complaint not controverted by the answer, must, for the purposes of the action, be taken as true; the statement of any new matter in the answer, in avoidance or constituting a defense or counter claim, must, on the trial, be deemed controverted by the opposite party.

A material allegation defined.

SEC. 4218. A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

Supplemental complaint and answer.

SEC. 4219. The plaintiff and defendant, respectively may be allowed, on motion, to make a supplemental complaint or answer, alleging facts material to the case occurring after the former complaint or answer.

Pleadings to be filed and served.

SEC. 4220. All pleadings subsequent to the complaint must be filed with the Clerk, and copies thereof served upon the adverse party, or his attorney.

CHAPTER VIII.

VARIANCE, MISTAKES AND AMENDMENTS.

SECTION
4225. Material variance, how provided for.
4226. Immaterial variance, how provided for.
4227. What not to be deemed a variance.
4228. Amendments of course, and effect of demurrer.
SECTION
4229. Amendments by the court, enlarging time to plead and relieving from judgments, etc.
4230. Suing a party by a fictitious name, when allowed
4231. No error or defect to be regarded unless it affects substantial rights.

Variance, when material.

SECTION 4225. No variance between the allegation in a pleading and the proof is to be deemed material, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that the party has been so misled, the court may order the pleading to be amended, upon such terms as may be just.

Immaterial variance how provided for.

SEC. 4226. Where the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

What not to be deemed a variance.

SEC. 4227. Where, however, the allegation of the claim or defense to which the proof is directed, is unproved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance, within the last two sections, but a failure of proof.

Amendments of course and effect of demurrer.

SEC. 4228. Any pleading may be amended once by the party of course, and without costs, at any time before answer or demurrer filed, or after demurrer and before the trial of the issue of law thereon, by filing the same as amended, and serving a copy on the adverse party, who may have ten days thereafter in which to answer or demur to the amended pleading. A demurrer is not waived by filing an answer at the same time; and when the demurrer to complaint is overruled and there is no answer filed, the court may, upon such terms as may be just, allow an answer to be filed. If a demurrer to the answer be overruled, the facts alleged in the answer must be considered as denied, to the extent mentioned in section 4217.

Amendments on terms.

Discretion and power of court.

SEC. 4229. The court may, in furtherance of justice and on such terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, and may upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow upon such terms as may be just, an amendment to any pleading or proceeding in other particulars and may, upon like terms, allow an answer to be made after the time limited by this code, and also relieve a party, or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; and whenever, for any reason satisfactory to the court or the judge thereof, the party aggrieved has failed to apply for the relief sought during the term at which such judgment, order, or proceeding complained of was taken, the court, or the judge thereof in vacation may grant the relief upon application made within a reasonable time, not exceeding six months after the adjournment of the term. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant, or his legal representative at any time within one year after the rendition of any judgment in such action, to answer to the merits of the original action. When in an action to recover the possession of personal property, the person making any affidavit did not truly state the value of the property and the officer taking the property or the sureties on any bond or undertaking, is sued for taking the same, the officer or sureties may, in their answer, set up the true value of the property, and that the person in whose behalf said affidavit was made, was entitled to the possession of the same when said affidavit was made or that the value in the affidavit stated was inserted by mistake, the court shall disregard the value as stated in the affidavit and give judg-

Affidavit; may be disregarded.

ment according to the right of possession of said property at the time the affidavit was made.

Suing a party by a fictitious name, when allowed.

SEC. 4230. When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.

No error or defect to be regarded unless it affects substantial rights.

SEC. 4231. The court must, in every stage of an action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties and no judgment shall be reserved or affected by reason of such error or defect.

TITLE VII.

OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

CHAPTER I.

ARREST AND BAIL.

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4249. Bail, how given.
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4254. Delivery of undertaking to plaintiff and its acceptance or rejection by him.
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4259. Deposit of money with Sheriff.
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4261. Substituting bail for deposit.
4262. Money deposited, how applied or disposed of.
4263. Sheriff, when liable as bail, and his discharge from liability.
4264. Proceedings on judgment against Sheriff.
4265. Motion to vacate order of arrest, or reduce bail. Affidavits on motion.
4266. When the order vacated or bail reduced.

No person to be arrested except as prescribed by this code.

SECTION 4240. No person can be arrested in a civil action, except as prescribed in this code.

Defendant when subject to arrest.

SEC. 4241. The defendant may be arrested as hereinafter prescribed, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon a contract express or implied where the defendant is about to depart from the Territory with intent to defraud his creditors, or when the action is for willful injury to person, to character, or to property, knowing the property to belong to another;

2. In an action for a fine or penalty, or on a promise to marry, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by a public officer or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such or by any other person in a fiduciary capacity; or for misconduct or neglect in office or in a professional employment or for a willful violation of duty;

3. In an action to recover the possession of personal property unjustly detained when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the Sheriff;

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought;

5. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Order for arrest by whom made.

SEC. 4242. An order for the arrest of the defendant must be obtained from a Judge of the court in which the action is brought or from a Probate Judge.

Affidavit for order of arrest requisite.

SEC. 4243. The order may be made whenever it appears to the Judge, by the affidavit of the plaintiff, or some other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section 4241. The affidavit must be either positive or upon information and belief; and when upon information and belief, it must state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavit must be filed with the Clerk of the Court.

Undertaking required of plaintiff.

SEC. 4244. Before making the order, the Judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the Judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the Clerk of the Court.

Order when made, and its form.

SEC. 4245. The order may be made at the time of the issuing of the summons, or at any time afterwards before judgment. It must require the Sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum and to return the order at a time therein mentioned, to the Clerk of the Court in which the action is pending.

Affidavit and order to be delivered to the sheriff, and copy to defendant.

SEC. 4246. The order of arrest, with a copy of the affidavit upon which it is made, must be delivered to the Sheriff, who, upon arresting the defendant, must deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

Arrest, how made.

SEC. 4247. The Sheriff must execute the order by arresting the defendant and keeping him in custody until discharged by law.

Defendant to be discharged on bail or deposit.

SEC. 4248. The defendant, at any time before execution, must be discharged from the arrest, either upon giving bail or depositing the amount mentioned in the order of arrest.

Bail, how given.

SEC. 4249. The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in the order of arrest that the defendant will at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

Surrender of defendant.

SEC. 4250. At any time before judgment or within ten days thereafter, the bail may surrender the defendant in their exoneration, or he may surrender himself to the Sheriff of the county where he was arrested.

Surrender of defendant.

SEC. 4251. For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest, or, by a written authority indorsed on a certified copy of the undertaking, may empower the Sheriff to do so. Upon the arrest of defendant by the Sheriff, or upon his delivery to the Sheriff by the bail, or upon his own surrender, the bail are exonerated, if such arrest, delivery, or surrender take place before the expiration of ten days after judgment; but if such arrest, delivery, or surrender be not made within ten days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within ten days thereafter.

Bail, how proceeded against.

SEC. 4252. If the bail neglect or refuse to pay the judgment within ten days after they are finally charged, an action may be commenced against such bail for the amount of the original judgment.

Bail, how exonerated.

SEC. 4253. The bail are exonerated by the death of the defendant or his imprisonment in the Territorial prison, or by his legal discharge from the obligation to render himself amenable to the process.

Delivery of undertaking to plaintiff, and its acceptance or rejection by him.

SEC. 4254. Within the time limited for that purpose, the Sheriff must file the order of arrest in the office of the Clerk of the Court in which the action is pending, with his return indorsed thereon; together with a copy of the undertaking of the bail. The original undertaking he must retain in his possession until filed, as herein provided. The plaintiff within ten days thereafter, may serve upon the Sheriff a notice that he does not accept the bail, or he is deemed to [have] accepted them, and the Sheriff is exonerated from liability. If no notice be served within ten days, the original undertaking must be filed with the Clerk of the Court.

Notice of justification.

SEC. 4255. Within five days after the receipt of notice, the Sheriff or defendant may give the plaintiff or his attorney, notice of the justification of the same, or other bail (specifying the places of residence and occupation of the latter), before the Judge of a Court or Probate Judge, at a specified time and place; the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given there must be a new undertaking.

New undertaking of other bail.

Qualifications of bail.

SEC. 4256. The qualifications of bail are as follows:

1. Each of them must be resident and householder or freeholder within the Territory;

2. Each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this chapter, over and above all his liabilities, exclusive of property exempt from execution; but the Judge on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification of bail.

SEC. 4257. For the purpose of justification each of the bail must attend before the Judge at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff touching his sufficiency, in such manner as the Judge in his discretion, may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff.

Allowance of bail.

SEC. 4258. If the Judge find the bail sufficient, he must annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the Sheriff is thereupon exonerated from liability.

Deposit of money with sheriff.

SEC. 4259. The defendant may at the time of his arrest, instead of giving bail, deposit with the Sheriff the amount mentioned in the order. In case the amount of the bail be reduced, as provided in this chapter, the defendant may deposit such amount instead of giving bail. In either case the Sheriff must give the defendant a certificate of the deposit made, and the defendant must be discharged from custody.

Payment of money into court by sheriff.

SEC. 4260. The Sheriff must, immediately after the deposit, pay the same into court and take from the Clerk receiving the same, two certificates of such payment, the one of which he shall deliver to the plaintiff's attorney and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the Sheriff, to collect the sum deposited as in other cases of delinquency.

Substituting bail for deposit.

SEC. 4261. If money is deposited, as provided in the two last sections, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited must be refunded to the defendant.

Money deposited, how applied or disposed of

SEC. 4262. Where money has been deposited, if it remains on deposit at the time of the recovery of a judgment in favor of the plaintiff, the Clerk must, under the direction of the Court, apply the same in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the Clerk must, under like direction of the Court, refund to him the whole sum deposited and remaining unapplied.

Sheriff when liable as bail, and his discharge from liability

SEC. 4263. If, after being arrested, the defendant escape or is rescued, the Sheriff is liable as bail; but he may discharge himself from such liability by the giving bail at any time before judgment.

Proceedings on judgment against sheriff.

SEC. 4264. If a judgment is recovered against the Sheriff upon his liability as bail, and an execution thereon is returned unsatisfied in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

Motion to vacate order of arrest or reduce bail.

SEC. 4265. A defendant arrested may, at any time before the trial of the action, or if there be no trial, before the entry of judgment, apply to the Judge of the court in which the action is pending, or to the court, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may

Contest of motion.

oppose the same by affidavits, or other proofs, in addition to those on which the order of arrest was made.

When the order vacated or bail reduced.

SEC. 4266. If, upon application, it appears that there was not sufficient cause for the arrest, the order must be vacated; or if it appears that the bail was fixed too high, the amount must be reduced.

CHAPTER II.

CLAIM AND DELIVERY OF PERSONAL PROPERTY.

SECTION
4271. Delivery of personal property, when it may be claimed.
4272. Affidavit and its requisites.
4273. Requisition to Sheriff to take and deliver the property.
4274. Security on the part of plaintiff, and proceedings in serving the order.
4275. Exception to sureties and proceedings thereon, or on failure to except.
SECTION
4276. Defendant, when entitled to redelivery.
4277. Justification of defendant's sureties.
4278. Qualification of sureties.
4279. Property, how taken when concealed in building or inclosure.
4280. Property, how kept.
4281. Claim of property by third person.
4282. Notice and affidavit, when and where to be filed.

Delivery of personal property, when it may be claimed.

SECTION 4271. The plaintif in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this chapter.

Affidavit and its requisite.

SEC. 4272. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, setting forth:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;
2. That the property is wrongfully detained by the defendant;
3. The alleged cause of the detention thereof, according to his best knowledge, information and belief;
4. That it has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure;
5. The actual value of the property.

Requisition to sheriff to take and deliver the property.

SEC. 4273. The plaintiff or his attorney may, thereupon, by an indorsement in writing upon the affidavit, require the Sheriff of the county where the property claimed may be, to take the same from the defendant.

Security on the part of the plaintiff and proceedings in serving the order.

SEC. 4274. Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the Sheriff, to the effect that they are bound to the defendant in double the value of the property as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the Sheriff must forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He must, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion, or, if neither have any known place of abode, by putting them in the nearest post office, directed to the defendant.

Exception to sureties and proceedings thereon, or on failure to except.

SEC. 4275. The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the Sheriff that he excepts to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When the defendant excepts, the sureties must justify on notice in like manner as upon bail on arrest; and the Sheriff is responsible for the sufficiency of the sureties until the objection to them is either waived or until they justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Defendant when entitled to redelivery.

SEC. 4276. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, except as provided in section 4281.

Justification of defendant's sureties.

SEC. 4277. The defendant's sureties, upon notice to the plaintiff of not less than two or more than five days, must justify before the Judge of the Court or Probate Judge, in the same manner as upon bail on arrest; and upon such justification the Sheriff must deliver the property to the defendant. The Sheriff is responsible for the defendant's sureties until they justify, or until the justification is completed or waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff.

Qualification of sureties.

SEC. 4278. The qualification of sureties must be such as are prescribed by this code, in respect to bail upon an order of arrest.

Property, how taken when concealed in building or inclosure.

SEC. 4279. If the property, or any part thereof, be concealed in a building or inclosure, the Sheriff must publicly demand its delivery. If it be not delivered, he must cause the building or inclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

Property, how kept.

SEC. 4280. When the Sheriff has taken property, as in this chapter provided, he must keep it in a secure place, and deliver to the party entitled thereto, upon receiving his fees for taking, and his necessary expenses for keeping, the same.

Claim of property by third person.

SEC. 4281. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or right to the possession thereof, stating the grounds of such title or right, and serve the same upon the Sheriff, the Sheriff is not bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, indemnify the Sheriff against such claim, by an undertaking by two sufficient sureties.

Notice and affidavit, and where to be filed.

SEC. 4282. The Sheriff must file the notice, undertaking and affidavit, with his proceedings thereon, with the Clerk of the Court in which the action is pending, within twenty days after taking the property mentioned therein.

CHAPTER III.

INJUNCTIONS.

SECTION
4287. Injunctions, what is, and who may grant it.
4288. When it may be granted.
4289. At what time it may be granted, and what is required to obtain it.
4290. Injunction after answer.
4291. Security upon injunction.
4292. Order to show cause why injunction should be granted.
SECTION
4293. Injunction to suspend business of a corporation, how and by whom granted.
4294. Injunction against Territorial officers.
4295. Motion to vacate or modify injunction.
4296. When to be vacated or modified.
4297. Affiants when to be produced.

Injunction what is, and who may grant it.

SECTION 4287. An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the court in which the action is brought, or by a Judge thereof, and when made by a Judge, it may be enforced as the order of the court.

When it may be granted.

SEC. 4288. An injunction may be granted in the following cases:

1. When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

2. When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, great or irreparable injury to the plaintiff;

3. When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tendency to render the judgment ineffectual;

Amendment.

4. When it appears, by affidavit, that the defendant during the pendency of the action, threatens, or is about to remove, or to dispose of his property with intent to defraud the plaintiff, an injunction order may be granted to restrain the removal or disposition;

Amendment.

5. An injunction may also be granted on the motion of the defendant upon filing a cross complaint, praying for affirmative relief upon any of the grounds mentioned above in this section, subject to the same rules and provisions provided for the issuance of injunctions on behalf of the plaintiff;

Amendment. 14 ses.

6. The District Courts or any Judge thereof sitting in chambers, in addition to the powers already possessed, shall have power to issue writs of injunction for affirmative relief having the force and effect of a writ of restitution, restoring any person or persons to the possession of any real property from the actual possession of which he or they may be ousted by force, or violence, or fraud, or stealth, or any combination thereof, or from which he or they are kept out of possession by threats whenever such possession was taken from him or them by entry of the adverse party on Sunday or a legal holiday, or in the night time, or while the party in possession was temporarily absent therefrom. The granting of such writ shall extend only to the right of possession under the facts of the case, in respect to the manner

in which the possession was obtained, leaving the parties to their legal rights on all other questions the same as though no such writ had issued; *Provided*, That no such writ shall issue except upon notice in writing to the adverse party of at least five days of the time and place of making application therefor.

[Act Feb. 10, 1887, in effect June 1, 1887.]

At what time it may be granted, and what is required to obtain it.

SEC. 4289. The injunction may be granted at the time of issuing the summons, upon the complaint, and at any afterwards, before judgment, upon affidavits. The complaint in the one case, and the affidavits in the other must show satisfactorily that sufficient grounds exist therefor. No injunction can be granted on the complaint unless it is verified. When the application is upon notice or order to show cause, a copy of the moving papers must be served with the notice or order; when granted without notice a copy of the moving papers must be served with the injunction.

Injunction after answer.

SEC. 4290. An injunction cannot be allowed after the defendant has answered, unless upon notice, or upon an order to show cause; but in such case the defendant may be restrained until the decision of the court or Judge granting or refusing the injunction.

Undertaking on injunction.

SEC. 4291. On granting an injunction, the court or Judge must require, except when the Territory, a county, or municipal corporation, or a married woman in a suit against her husband, is a party plaintiff, a written undertaking on the part of the plaintiff, with sufficient sureties to the effect that the plaintiff will pay to the party enjoined such costs, damages and reasonable counsel fees, not exceeding an amount to be specified, as such party may incur or sustain by reason of the injunction, if the court finally decide that the plaintiff was not entitled thereto. Within five days after the service of the injunction, the defendant may except to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two or more than five days, must justify before the Judge or a Probate Judge, in the same manner as upon bail on arrest, and upon failure to justify, or if others in their place fail to justify at the time and place appointed, the order granting an injunction shall be dissolved.

Justification of sureties.

Order to show cause why injunction should not be granted.

SEC. 4292. If the court or Judge deem it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.

Injunction to suspend business of a corporation, how and by whom granted.

SEC. 4293. An injunction to suspend the general and ordinary business of a corporation cannot be granted except by the court or Judge thereof; nor can it be granted without due notice of the application therefor to the proper officers or agent of the corporation, except when the people of this Territory are a party to the proceeding.

Restrictions upon injunction to retain Territorial officers.

SEC. 4294. Where a duty is imposed by statute upon a territorial officer, or officers, an injunction to restrain him or them, or a person employed by him or them, from the performance of that duty, or to prevent the execution of the statute, shall not be granted, except by the District Court, sitting in the county in which the officer or officers are located, or the duty is required to be performed; and upon notice of the application therefor to the officer, or officers, or other person to be restrained.

Motion to vacate or modify injunction.

SEC. 4295. If an injunction be granted without notice, the defendant, at any time before the trial, may apply to the Judge who granted the injunction, or to the court in which the action is brought, to dissolve or modify the same. The application may be made upon the complaint and the affidavit on which the injunction was granted, or the answer or upon affidavit on the part of the defendant, with or without the answer. If the application be made upon affidavits on the part of the defendant, it must be upon reasonable notice to the plaintiff, and in that case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the injunction was granted.

When to be vacated or modified.

SEC. 4296. If upon such application it satisfactorily appear that there is not sufficient ground for the injunction, it must be dissolved; or if it satisfactorily appear that the extent of the injunction is too great, it must be modified.

Moving party required to produce his witnesses for cross-examination.

SEC. 4297. Upon the hearing of an application for an injunction upon notice to the adverse party, or upon return of an order to show cause why an injunction should not be granted, or upon an application to dissolve or modify an injunction granted without notice, where the injunction was granted or is applied for wholly or in part upon affidavits, the party resisting the application or moving to dissolve the injunction may by three days' written notice require the adverse party to produce at the hearing for cross examination before the court or Judge, the affiants of the affidavits upon which he relies for the injunction, or to resist the application for its dissolution; and any party so requiring his adverse party to produce his witnesses at such hearing must himself produce for cross examination, the witnesses upon whom he relies upon such hearing; and either party may have the same process, to secure the attendance of witnesses at such hearing upon trial of issue of fact in the District Court; and in such case, where the attendance of witnesses shall have been so required, no affidavit shall be read or considered by the court or Judge upon such hearing unless the affiant is so produced for cross examination, *Provided*, That the court or Judge may, at the conclusion of the examination of the witnesses produced by the respective parties, for good cause shown, adjourn the hearing to enable either party to secure the attendance of an absent affiant, or may direct his examination to be taken in writing before such officer and at such time and place as the court or Judge may designate. The examination of any witness produced before the court or Judge must, upon request of either party, be reduced to writing, subscribed by the affiant, certified by the Judge and filed in the action, and with an examination taken in compliance with the order of the court or Judge, be made a part of the record upon appeal in the same manner as affidavits are made a part of such record.

Opposing party same.

Examination may be ordered.

Examination may be reduced to writing.

CHAPTER IV.

ATTACHMENTS.

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Attachment, when may issue and in what cases.

SECTION 4302. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

1. In an action upon a judgment, or upon contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property; or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless;

2. In an action upon a judgment or upon contract, express or implied, against a defendant not residing in this Territory.

Affidavit for attachment, what to contain.

SEC. 4303. The Clerk of the Court must issue the writ of attachment, upon receiving an affidavit by or on behalf of plaintiff, setting forth:

1. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter-claims) and whether upon a judgment or upon a contract, for the direct payment of money, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; or,

2. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter-claims,) and that the defendant is a non-resident of the Territory; and

3. That the attachment is not sought, and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant.

Undertaking on attachment.

SEC. 4304. Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ, to whom directed and what to state.

SEC. 4305. The writ must be directed to the Sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant, within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been, or is about to be, attached; in which case, to take such undertaking, several writs may be issued at the same time to the Sheriffs of different counties; and the plaintiff may have other writs of attachment as often as he may require at any time before judgment.

Shares of stock and debts due defendant, how attached and disposed of.

SEC. 4306. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon and all debts due such defendant, and all other property in this Territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

How real and personal property shall be attached.

SEC. 4307. The sheriff to whom the writ is directed and delivered, must execute the same without delay, and if the undertaking mentioned in section 4305 be not given, as follows:

1. Real property, standing upon the records of the county in the name of the defendant, must be attached, by filing with the Recorder of the county a copy of the writ, together with a description of the property attached, and a notice that it is attached; and by leaving a similar copy of the writ, description, and notice with an occupant of the property, if there is one, if not, then by posting the same in a conspicuous place on the property attached;

2. Real property or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached, by filing with the Recorder of the county a copy of the writ, together with a description of the property, and a notice that such real property, and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached; and by leaving with the occupant, if any, and with such other person, or his agent, if known and within the county, or at a residence of either, if within the county, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The Recorder must index such

attachment when filed, in the names, both of the defendant and of the person by whom the property is held, or in whose name it stands on the records;

3. Personal property, capable of manual delivery must be attached by taking it into custody;

4. Stock or shares, or interest in stock or shares, of any corporation or company, must be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ;

5. Debts and credits, and other personal property, not capable of manual delivery, must be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him, to the defendant, or the credits or other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Attorney to give written instructions to sheriff what to attach.

SEC. 4308. Upon receiving information in writing from the plaintiff or his attorney, that any person has in his possession or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff must serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Garnishment, when garnishee liable to plaintiff.

SEC. 4309. All persons having in their possession or under their control, any credits or other personal property belonging to the defendant, at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the Sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

Citation to garnishee to appear before a court or judge.

SEC. 4310. Any person owing debts to the defendant, or having in his possession or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or Judge or a referee appointed by the court or Judge and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property and may be examined on oath. The court or Judge may, after such examination, order personal property capable of manual delivery to be delivered to the Sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Inventory, how made.

SEC. 4311. The Sheriff must make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to the debts and credits attached, he must request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the cost of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

Party refusing to give memorandum may be compelled to pay costs.

SEC. 4312. If any of the property attached be perishable, the Sheriff must sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to issuing of the attachment. Debts and credits attached may be collected by him if the same can be done without suit. The Sheriff's receipt is a sufficient discharge for the amount paid.

Perishable property, how sold.

Accounts without suit to be collected.

SEC. 4313. Whenever property has been taken by an officer under a writ of attachment and it is made to appear satisfactory to the court, or a judge thereof, that the interests of the parties to the action will be subserved by a sale thereof, the court or Judge may order such property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action. Such order can be made only upon notice to the adverse party or his attorney, in case such party has been personally served with a summons in the action.

Property attached may be sold as under execution, if the interests of the parties require.

SEC. 4314. If any personal property attached be claimed by a third person as his property, the Sheriff may summon a jury of six men to try the validity of such claim; and such proceedings shall be had thereon, with the like effect as in case of a claim after levy upon execution.

When property claimed by a third party, how tried.

SEC. 4315. If judgment be recovered by the plaintiff, the Sheriff must satisfy the same out of the property attached by him which has not been delivered to the defendant, or a claimant as hereinbefore provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose;

If plaintiff obtains judgment, how satisfied.

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment;
2. If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sale must be given, and the sales conducted as in other cases of sales on execution.

SEC. 4316. If, after selling all the property attached by him remaining in his hands and applying the proceeds together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the Sheriff must proceed to collect such balance, as upon an execution in other cases. Whenever the judgment shall have been paid, the Sheriff, upon reasonable demand, must deliver over to the defendant the

When there remains a balance due, how collected.

attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

When suits may be commenced on the undertaking.

SEC. 4317. If the execution be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to section 4305 or section 4320, or he may proceed as in other cases upon the return of an execution.

If defendant recover judgment, what the sheriff is to deliver.

SEC. 4318. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the Sheriff, and all the property attached remaining in the Sheriff's hands must be delivered to the defendant or his agent. The order of attachment shall be discharged and the property released therefrom.

Proceedings to release attachment, before whom taken.

SEC. 4319. Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the Judge thereof for an order to discharge the attachment wholly or in part; and upon the execution of the undertaking mentioned in the next section, an order may be made, releasing from the operation of the attachment any or all of the property attached, and all of the property so released, and all of the proceeds of the sales thereof must be delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff.

Release from attachment, on what terms.

SEC. 4320. Before making such order, the court or Judge must require an undertaking on behalf of the defendant by at least two sureties, residents, and freeholders, or householders, in the county, to the effect that in case the plaintiff recover judgment in the action, defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of the judgment, or, in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or Judge making such order may fix the sum for which the undertaking must be executed, and, if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court or Judge, and the property attached cannot be released from the attachment without their justification if the same be required.

Motion for discharge of writ, when and before whom made.

SEC. 4321. The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the Judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

When motion made on affidavit, it may be opposed by affidavit.

SEC. 4322. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the attachment was made.

When writ must be discharged.

SEC. 4323. If upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

When writ to be returned.

SEC. 4324. The Sheriff must return the writ of attachment with the summons, if issued at the same time; otherwise within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order may be filed in the office of the County Recorder in which the notice of attachment has been filed, and be indexed in like manner.

CHAPTER V.

RECEIVERS.

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4329. Appointment of receiver.
4330. Appointment of receivers upon dissolution of corporation.
4331. Who shall not be appointed.
SECTION
4332. Oath and undertaking.
4333. Powers of receivers.
4334. Investment of funds.

Appointment of receiver.

SECTION 4329. A receiver may be appointed by the court in which an action is pending or has passed to judgment, or by the Judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or jointly interested in any property or fund, on the application of the plaintiff or of any party whose right to, or interest in the property, or fund, or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured;
2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;
3. After judgment to carry the judgment into effect;
4. After judgment to dispose of the property according to the judgment or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;
5. In the case when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;
6. In all other cases where receivers have heretofore been appointed by the usages of Courts of Equity.

Appointment of receivers upon dissolution of corporation.

SEC. 4330. Upon the dissolution of any corporation, the District Court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any member or stockholder thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

Receiver, appointment; undertaking on ex parte application.

SEC. 4331. No party, or attorney, or person interested in an action, can be appointed receiver therein, without the written consent of the parties, filed with the Clerk. If a receiver be appointed upon an *ex parte* application, the court, before making the order, may require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment wrongfully, maliciously, or without sufficient cause: and the court may, in its discretion, at any time after said appointment, require an additional undertaking.

Oath and undertaking.

SEC. 4332. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the court or Judge, execute an undertaking, to such person, and in such sum as the court or Judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Power of receivers.

SEC. 4333. The receiver has under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

Investment of funds.

SEC. 4334. Funds in the hands of a receiver may be invested upon interest, by order of the court; but no such order can be made, except upon the consent of all the parties to the action.

CHAPTER VI.

DEPOSIT IN COURT.

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4339 Deposit in court.
4340. Money paid to clerk must be deposited with County Treasurer.

SECTION
4341. Manner of enforcing the order.

Deposit in court.

SECTION 4339. When it is admitted by the pleading, or shown upon the examination of a party, that he has in his possession, or under his control any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Money paid to clerk must be deposited with county treasurer.

SEC. 4340. If the money is deposited in court it must be paid to the Clerk, who must deposit it with the County Treasurer, by him to be held subject to the order of the court. For the safe keeping of the money deposited with him the Treasurer is liable on his official bond.

Manner of enforcing the order.

SEC. 4341. Whenever, in the exercise of its authority, a court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, beside punishing the disobedience, may make an order requiring the Sheriff to take the money, or thing, and deposit, or deliver it in conformity with the direction of the court.

TITLE VIII.

OF THE TRIAL AND JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

JUDGMENT IN GENERAL.

SECTION
4350. Judgment defined.
4351. Judgment may be for or against one of the parties.
4352. Judgment may be against one party and action proceed as to others.

SECTION
4353. The relief to be awarded to the plaintiff.
4354. Action may be dismissed or non-suit entered.
4355. All other judgments are on the merits.

SECTION 4350. A judgment is the final determination of the rights of the parties in an action or proceeding.

Judgment defined.

SEC. 4351. Judgment may be given for, or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

Judgment may be for or against one of the parties.

SEC. 4352. In an action against several defendants the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

Judgment may be against one party and action proceed as to others.

SEC. 4353. The relief granted to the plaintiff, if there be no answer, cannot exceed that which he shall have demanded in his complaint; but in any other case, the court may grant him any relief consistent with the case made by the complaint and embraced within the issue.

The relief to be awarded to the plaintiff.

SEC. 4354. An action may be dismissed, or a judgment of non-suit entered, in the following cases:

Action may be dismissed or non-suit entered.

1. By the plaintiff himself, at any time before trial, upon the payment of costs; *Provided,* A counter claim has not been made or affirmative relief sought by the cross-complaint or answer of defendant. If a provisional remedy has been allowed the undertaking must thereupon be delivered by the clerk to the defendant, who may have his action thereon;
2. By either party, upon the written consent of the other;
3. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal;
4. By the court, when, upon the trial, and before the final submission of the case, the plaintiff abandons it;
5. By the court, upon motion of the defendant, when, upon the trial, the plaintiff fails to prove a sufficient case for the jury. The dismissal mentioned in the first two subdivisions is made by an entry in the Clerk's register. Judgment may thereupon be entered accordingly.

SEC. 4355. In every case, other than those mentioned in the last section, judgment must be rendered on the merits.

All other judgments are on the merits.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

SECTION
4360. In what cases judgment may be had upon the failure to answer.

In what cases judgment may be had upon the failure of the defendant to answer.

SECTION 4360. Judgment may be had, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money or damages only, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk, upon application of the plaintiff, must enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs against the defendant, or against one or more of several defendants, in the cases provided for in section 4147;

2. In other actions, if no answer has been filed with the Clerk of the Court within the time specified in the summons, or such further time as may have been granted, the Clerk must enter the default of the defendant; and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, or to carry the judgment into effect, the court may take the account or hear the proof; or may, in its discretion, order a reference for that purpose. And where the action is for the recovery of damages, in whole or in part, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be involved, by a reference as above provided;

3. In actions where the service of the summons was by publication, the plaintiff, upon the expiration of the time for answering, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the court must thereupon require proof to be made of the demand mentioned in the complaint; and if the defendant be not a resident of the Territory, must require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff or to any one for his use, on account of such demand, and may render judgment for the amount which he is entitled to recover.

CHAPTER III.

ISSUES—THE MODE OF TRIAL AND POSTPONEMENTS.

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4365. Issue defined, and the different kinds.
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4370. Clerk must enter causes on the calendar, to remain until disposed of.
4371. Parties may bring issue to trial.
4372. Motion to postpone a trial for absence of testimony, requisites of.
4373. In cases of adjournment a party may have the testimony of any witness taken.

Issue defined, and the different kinds.

SECTION 4365. Issues arise upon the pleadings when a fact or a conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

1. Of law; and,
2. Of fact.

Issue of law, how raised.

SEC. 4366. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact, how raised.

SEC. 4367. An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and,
2. Upon new matters in the answer, except an issue of law is joined thereon.

Issue of law, how tried.

SEC. 4368. An issue of law must be tried by the court, unless it is referred upon consent.

Issues, by whom tried, and order of trial.

SEC. 4369. In actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this Code. Where, in these cases, there are issues both of law and fact, the issue of law must be first disposed of. In other cases, issues of fact must be tried by the court subject to its power to order an issue to be referred to a referee, as provided in this Code.

Clerk must enter causes on the calendar, to remain until disposed of.

SEC. 4370. The Clerk must enter causes upon the calendar of the court according to the date of issue. Causes once placed on the calendar must remain upon the calendar from court to court, until finally disposed of; *Provided*, That causes may be dropped from the calendar by consent of parties, or by order of the court, and may be again restored upon notice.

Parties may bring issue to trial.

SEC. 4371. Either party may bring an issue to trial, or to a hearing, and in the absence of the adverse party, unless the court, for good cause, otherwise direct, may proceed with his case and take a dismissal of the action, or a verdict, or judgment, as the case may require.

Motion to postpone a trial for absence of testimony, requisites of.

SEC. 4372. A motion to postpone a trial on the ground of the absence of evidence can only be made upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

In cases of adjournment a party may have the testimony of any witness taken.

SEC. 4373. The party obtaining a postponement of a trial in any court of record must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before a Judge or Clerk of the court in which the case is pending, or before such Notary Public as the court may indicate, which must accordingly be done; and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witnesses were produced.

CHAPTER IV.

TRIAL BY JURY.

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Jury, how drawn.

SECTION 4378. When the action is called for trial by jury, the Clerk must draw from the trial jury box of the court, the ballots containing the names of the jurors, until the jury is completed or the ballots are exhausted.

Challenges, peremptory, how taken.

SEC. 4379. Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made. The challenges are to individual jurors, and are either peremptory or for cause. Each party is entitled to four peremptory challenges. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff.

Grounds of challenge.

SEC. 4380. Challenges for cause may be taken on one or more of the following grounds:

1. A want of any of the qualifications prescribed by this Code to render a person competent as a juror;
2. Consanguinity or affinity, within the fourth degree to any party;
3. Standing in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner, or united in business with either party, or surety on any bond or obligation for either party;
4. Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action, or being then a witness or subpœnaed therein;
5. Pecuniary interest on the part of the juror in the event of the action or in the main question involved in the action, except his interest as a member or citizen of a municipal corporation;
6. Having an unqualified opinion or belief as to the merits of the action, or main question involved therein, founded upon knowledge or information of its material facts or of some of them;
7. The existence of a state of mind in the juror evincing enmity against or bias to or against either party.

Challenges, how tried.

SEC. 4381. Challenges for cause must be tried by the court. The juror challenged and any other person, may be examined as a witness on the trial of the challenge.

Jury to be sworn.

SEC. 4382. As soon as the jury is completed, an oath must be administered to the jurors in substance, that they and each of them will well and truly try the matter in issue between————, the plaintiff, and ————, the defendant, and a true verdict render according to the evidence.

Order of proceeding on trial.

SEC. 4383. When the jury has been sworn, the trial must proceed in the following order, unless the Judge for special reasons otherwise directs:

1. The plaintiff, after stating the issue and his case, must produce the evidence on his part;
2. The defendant may then open his defense and offer his evidence in support thereof;
3. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case;
4. When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides without argument, the plaintiff must commence and may conclude the argument;
5. If several defendants having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument;
6. The court may then charge the jury.

Charge to the jury.

Court must furnish in writing, upon request, the points of law contained therein.

SEC. 4384. In charging the jury the court may state to them all matters of law which he thinks necessary for their information in giving their verdict; and if it state the testimony of the case it must inform the jury that they are the exclusive judges of all questions of fact. The court must furnish to either party at the time, upon request, a statement in writing of the points of law contained in the charge or sign at the time a statement of such points prepared and submitted by the counsel of either party.

Special instructions.

SEC. 4385. Where either party asks special instructions to be given to the jury, the court must either give such instructions, as requested, or refuse to do so, or give the instruction with a modification, in such manner that it may distinctly appear what instructions were given in whole or in part.

View by jury of the premises.

SEC. 4386. When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred; it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Admonition when jury permitted to separate.

SEC. 4387. If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial; and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

Jury may take with them certain papers.

SEC. 4388. Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause, except depositions, or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession; and they may also take with them notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

Deliberation of jury, how conducted.

SEC. 4389. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together, in some convenient place, under charge of an officer, until they agree upon a verdict or are discharged by the court. Unless by order of the court the officer having them under his charge must not suffer any communication to be made to them, or make any himself, except to ask them if they are agreed upon their verdict; and he must not, before their verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon.

May come into court for further instructions.

SEC. 4390. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desired to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to, the parties or counsel.

Proceedings in case a juror becomes sick.

SEC. 4391. If, after the impaneling of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case the trial may proceed with the other jurors, or another juror may be sworn and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards impaneled.

When prevented from giving a verdict the cause may be again tried.

SEC. 4392. In all cases where the jury are discharged or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct.

While jury are absent, court may adjourn from time to time.

SEC. 4393. While the jury are absent the court may adjourn from time to time, in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged.

Sealed verdict.

The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during a recess or adjournment for the day.

Final adjournment discharges the jury.

A final adjournment of the court for the term discharges the jury.

Verdict how declared.

SEC. 4394. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the Clerk and the verdict rendered by their foreman.

Form of,

The verdict must be in writing, signed by the foreman and must be read by the Clerk to the jury, and the inquiry made whether it is their verdict.

Polling the jury.

If any juror disagrees, they must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. Either party may require the jury to be polled, which is done by the court or Clerk asking each juror if it is his verdict. If any one answer in the negative, the jury must again be sent out.

Proceedings when verdict is informal.

SEC. 4395. When the verdict is announced, if it is informal or insufficient in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

General and special verdict defined.

SEC. 4396. The verdict of a jury is either general or special. A general verdict is that by which they pronounce generally upon all or any of the issues either in favor of the plaintiff or defendant; a special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the court but to draw from them conclusions of law.

When a general or special verdict may be rendered.

SEC. 4397. In an action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct a jury to find a special verdict in writing upon all or any of the issues, and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon.

The special verdict or finding must be filed with the Clerk and entered upon the minutes. Where a special finding of facts, is inconsistent with the general verdict, the former controls the latter, and the Court must give judgment accordingly.

Verdict in actions for the recovery of money or on establishing counter claim.

SEC. 4398. When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant, when a counter claim for the recovery of money is established, exceeding the amount of the plaintiff's claim as established, the jury must also find the amount of the recovery.

Verdict in actions for specific personal property.

SEC. 4399. In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury, if their verdict be in favor of the plaintiff, or, if being in favor of the defendant, they also find that he is entitled to a return thereof, must find the value of the property, and if so instructed, the value of specific portions thereof, and may at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of such property.

Entry of verdict.

SEC. 4400. Upon receiving a verdict, an entry must be made by the Clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where special verdict is found, either the judgment rendered thereon, or if the case be reserved for argument or further consideration, the order thus reserving it.

CHAPTER V.

TRIAL BY THE COURT.

SECTION
4405. When and how trial by jury may be waived.
4406. Upon trial by court decision to be in writing and filed within twenty days.
SECTION
4407. Facts found and conclusions of law must be separately stated. Judgment on.
4408. Finding may be waived, how.
4409. Proceedings after determination of issue of law.

Trial by jury, when and how waived.

SECTION 4405. Trial by jury may be waived by the several parties to an issue of fact in actions arising on contract, or, for the recovery of specific real or personal property, with or without damages, and with the assent of the court, in other actions, in manner following:

1. By failing to appear at the trial;
2. By written consent, in person or by attorney, filed with the Clerk;
3. By oral consent, in open court, entered in the minutes.

Decision of court on question of fact, when to be filed.

SEC. 4406. Upon a trial of a question of fact by the court, its decision must be given in writing and filed with the Clerk within twenty days after the cause in submitted for decision.

Facts found and conclusions of law must be separately stated, judgment on.

SEC. 4407. In giving the decision, the facts found and the conclusions of law must be separately stated. Judgment upon the decision must be entered accordingly.

Findings may be waived, how.

SEC. 4408. Findings of fact may be waived by the several parties to an issue of fact:

1. By failing to appear at the trial;
2. By consent in writing, filed with the Clerk;
3. By oral consent in open court, entered in the minutes.

Proceedings after determination of issue of law.

SEC. 4409. On a judgment for the plaintiff upon an issue of law, he may proceed in the manner prescribed by the first two subdivisions of section 4360 upon the failure of the defendant to answer. If judgment be for the defendant upon an issue of law, and the taking of an account, or the proof of any fact, be necessary to enable the court to complete the judgment, a reference may be ordered, as in that section provided.

CHAPTER VI.

OF REFERENCES AND TRIALS BY REFEREES.

SECTION
4414. Reference ordered upon agreement of parties, in what cases.
4415. Reference ordered on motion, in what cases.
4416. Number of referees, qualifications, etc.
SECTION
4417. Either party may object, grounds of objection.
4418. Objections, how disposed of.
4419. Referees to report within twenty days.
4420. Effect of referee's finding.
4421. How excepted to, etc.

Reference ordered upon agreement of parties.

SECTION 4414. A reference may be ordered upon the agreement of the parties filed with the Clerk, or entered in the minutes:

1. To try any or all the issues in an action or proceeding, whether of fact or of law, and to report a finding and judgment thereon;
2. To ascertain a fact necessary to enable the court to determine an action or proceeding.

Reference ordered on motion, in what cases.

SEC. 4415. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue or report upon any specific question of fact involved therein;
2. When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect;
3. When a question of fact other than upon the pleadings, arises upon motion or otherwise, in any stage of the action;
4. When it is necessary for the information of the court in a special proceeding.

Number of referees, qualifications, etc.

SEC. 4416. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree the court or Judge must appoint one or more referees, not exceeding three, who reside in the county in which the action or proceeding is triable, and against whom there is no legal objection.

Either party may object.

SEC. 4417. Either party may object to the appointment of any person as referee, on one or more of the following grounds:

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror;
2. Consanguinity or affinity within the third degree to either party;
3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party; or a partner in business with either party; or being security on any bond or obligation for either party;
4. Having served as a juror or been a witness on any trial between the same parties for the same cause of action;
5. Interest on the part of such person in the event of the action, or in the main question involved in the action;
6. Having formed or express[ed] an unqualified opinion or belief as to the merits of the action;
7. The existence of a state of mind in such person evincing enmity against or bias to either party.

Objections, how disposed of.

SEC. 4418. The objections taken to the appointment of any person as referee must be heard and disposed of by the court. Affidavits may be read and witnesses examined as to such objections.

Referees to report within twenty days.

SEC. 4419. The referees must report their findings in writing to the court within twenty days after the testimony is closed; and the facts found and conclusions of law must be separately stated therein.

Effect of referee's finding.

SEC. 4420. The finding of the referee upon the whole issue must stand as the finding of the court, and upon filing the finding with the Clerk of the Court, judgment may be entered thereon in the same manner as if the action had been tried by the court.

How excepted to, etc.

SEC. 4421. The findings of the referee may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the finding reported has the effect of a special verdict.

CHAPTER VII.

EXCEPTIONS.

SECTION
4426. Exceptions may be taken. Time when taken, etc.
4427. What deemed excepted to.
4428. Exception. Form of.
4429. Exceptions signed by Judge and filed with Clerk.
4430. Exceptions not presented at time of ruling. Notice to adverse party, how settled upon, etc.

SECTION
4431. Exceptions after judgment, etc.
4432. When exception is refused, application to Supreme Court to prove the same, etc
4433. Proceedings where Judge ceases to hold office.

Exception what is.

SECTION 4426. An exception is an objection upon a matter of law, to a decision made either before or after judgment, by a court, tribunal, Judge, or other judicial officer in an action or proceeding.

When taken. 14 ses

Except as provided in the next section, the exception must be taken and settled at the time the decision is made, and no order of court shall be made for the settlement of such exception at any other time, except by the agreement of both parties.

Time for.

When an exception is taken, the court, Judge, tribunal, or judicial officer shall allow sufficient time for the reduction to writing, and settlement of the same, and in case such time shall not be allowed, or such exception shall not be fairly settled, the facts may be shown by affidavit, and the party taking such exception may apply to the court, or tribunal, to which an appeal lies, in the action or proceeding, to settle the same fairly, according to the facts, and when so settled, the same shall become a part of the record in such action or proceeding. [Act Jan. 31, 1887, in effect June 1, 1887.]

What deemed excepted to.

SEC. 4427. The verdict of the jury, the final decision in an action or proceeding, an interlocutory order or decision, finally determining the rights of the parties, or some of them; an order or decision made upon a contested motion; an order or decision from which an appeal may be taken; an order sustaining or overruling a demurrer, allowing or refusing to allow an amendment to a pleading, striking out a pleading or a portion thereof, refusing a continuance; an order made upon *ex-parte* application, and an order or decision made in the absence of a party, are deemed to have been excepted to; and such exception to the verdict of a jury; to the final decision of an action or proceeding; to an order or decision finally determining the rights of the parties or any of them; to an order sustaining or overruling a demurrer; or to any other order or decision included within the terms of this section, where such order or decision and the papers upon which it is made are a part of the records and files in the action, need not, unless desired by the party objecting thereto, be embodied in a bill of exceptions, but the same, appearing in the record or files, may be reviewed upon appeal as though settled in such bill of exceptions.

Amendment.

SEC. 4428. No particular form of exception is required. But when the exception is to the verdict or decision, upon the grounds of the insufficiency of the evidence to sustain it. the objection must specify the particulars in which such evidence is alleged to be insufficient. The objection must be stated, with so much of the evidence or other matter as is necessary to explain it, and no more. Only the substance of the Reporter's notes of the evidence shall be stated. Documents on file in the action or proceeding may be copied, or the substance thereof stated, or a reference thereto, sufficient to identify them may be made.

Exception, form of.

SEC. 4429. A bill containing the exception to any decision may be presented to the court or Judge for settlement at the time the decision is made, and after having been settled, shall be signed by the Judge and filed with the Clerk. When the decision excepted to is made by a tribunal other than a court, or by a judicial officer, the bill of exceptions shall be presented to, and settled and signed by such tribunal or officer.

Bill of exceptions.

SEC. 4430. When a party desires to have exceptions taken at a trial settled in a bill of exceptions, he may, within ten days after the entry of judgment, if the action were tried with a jury, or after receiving notice of the entry of judgment, if the action were tried without a jury, or such further time as the court in which the action is pending, or a Judge thereof, may allow, prepare the draft of a bill, and serve the same, or a copy thereof, upon the adverse party. Within ten days after such service, the adverse party may propose amendments thereto, and serve the same, or a copy thereof, upon the other party. The proposed bill and amendments must within ten days thereafter, by the party seeking the settlement of the bill, be delivered to the Clerk of the Court for the Judge who tried or heard the case. When received by the Clerk, he must immediately deliver them to the Judge, if he be in the county; if he be absent from the county, and within the Territory, and either party desire the papers to be forwarded to the Judge, the Clerk must, upon notice in writing of such party, immediately forward them by mail, or other safe channel; if not thus forwarded, the Clerk must deliver them to the Judge immediately after his return to the county. When received from the Clerk, the Judge must designate the time at which he will settle the bill, and the Clerk must immediately notify the parties of such designation. At the time designated, the Judge must settle the bill. If the action was tried before a referee, the proposed bill, with the amendments, if any, must be presented to such referee for settlement within ten days after service of the amendments, and thereafter, upon notice of five days to the adverse party, the referee shall settle the bill. If no amendments are served, or if served are allowed, the proposed bill may be presented, with the amendments, if any, to the Judge or referee, for settlement without notice to the adverse party. It is the duty of the Judge or referee, in settling the bill, to strike out of it all redundant and useless matter, so that the exceptions may be presented as briefly as possible. When settled, the bill must be signed by the Judge or referee, with his certificate to the effect that the same is allowed, and shall then be filed with the Clerk.

Bill of exceptions, preparation and settlement of, amended.

Action before referee.

Exceptions after judgment, etc.

SEC. 4431. Exceptions to any decision made after judgment, may be presented to the Judge at the time of such decision and be settled or noted as provided in section 4429, and a bill thereof may be presented and settled afterwards, as provided in section 4430, and within like periods after entry of the order upon appeal from which such decision is reviewable.

When exception is refused, application to supreme court to prove the same, etc.

SEC. 4432. If the Judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the Supreme Court to prove the same. The application may be made in the mode and manner, and under such regulations as that Court may prescribe; and the bill when proven, must be certified by a Justice as correct, and filed with the Clerk of the Court in which the action was tried, and when so filed it has the same force and effect as if settled by the Judge who tried the cause.

Proceedings where judge ceases to hold office, etc.

SEC. 4433. When the decision excepted to was made by any judicial officer other than a Judge, the bill of exceptions shall he presented to such judicial officer and be settled and signed by him, in the same manner as it is required to be presented to, settled and signed by a court or Judge. A Judge or judicial officer may settle and sign a bill of exceptions after as well as before he ceases to be such Judge or judicial officer. If such Judge or judicial officer, before the bill of exceptions is settled, dies, is removed from office, becomes disqualified, is absent from the Territory, or refuses to settle the bill of exceptions, or if no mode is provided by law for the settlement of the same, it shall be settled and certified in such manner as the Supreme Court may, by its order or rules, direct. Judges, judicial officers, and the Supreme Court shall respectively possess the same power, in settling and certifying statements as is by this section conferred upon them in settling and certifying bills of exceptions.

CHAPTER VIII.

NEW TRIALS.

4438. New trial defined.
4439. When a new trial may be granted.
4440. On what papers moved for.
4441. Notice of motion, upon whom served and what to contain.

SECTION
4442. Motion to be heard.
4443. Record on appeal.
4444. New trial ordered by court.
4445. Motion, where heard.

New trial defined.

SECTION 4438. A new trial is a re-examination of an issue of fact in the same Court after a trial and decision by a jury or Court or by referees.

When a new trial may be granted.

SEC. 4439. The former verdict or other decision may be vacated and a new trial granted on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

2. Misconduct of the jury; and when any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by a resort to the determination of chance.

Such misconduct may be proved by the affidavit of any one of the jurors;

3. Accident or surprise, which ordinary prudence could not have guarded against;

4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial;

5. Excessive damages, appearing to have been given under the influence of passion or prejudice;

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

7. Error in law, occurring at the trial, and excepted to by the party making the application.

On what papers moved.

SEC. 4440. When an application is made for a cause mentioned in the first, second, third, and fourth subdivisions of the last section it must be made upon affidavits; for any other cause it may be made, at the option of the moving party either upon the records, and files in the action, or the minutes of the court or a bill of exceptions, or a statement of the case prepared as hereinafter provided.

Notice of intention, when to be filed and what to contain.

SEC. 4441. The party intending to move for a new trial must, within ten days after the verdict of the jury, if the action were tried by a jury, or after notice of the decision of the court or referee, if the action were tried without a jury, file with the Clerk and serve upon the adverse party a notice of his intention, designating the grounds upon which the motion will be made, and whether the same will be made upon affidavits, or the records and files in the action, or the minutes of the court or a bill of exceptions, or the statement of the case;

Affidavits.

1. If the motion is to be made upon affidavits, the moving party must, within ten days after serving the notice, or such further time as the court in which the action is pending, or a Judge thereof may allow, file such affidavits with the Clerk and serve a copy upon the adverse party, who shall have ten days to file counter affidavits, a copy of which must be served upon the moving party;

Bill of exceptions.

2. If the motion is to be made upon a bill of exceptions, and no bill has already been settled as hereinbefore provided, the moving party shall have the same time after service of the notice to prepare and obtain a settlement of a bill of exceptions, as is provided after the entry of judgment or after receiving notice of such entry by section 4430, and the bill shall be prepared and settled in a similar manner. If a bill of exceptions has been already settled and filed, when the notice of motion is given, such bill shall be used on the motion;

Statement.

3. If the motion is to be made on a statement of the case, the moving party must, within ten days after service of the notice, or such further time as the Court in which the action is pending, or the Judge thereof may allow, prepare a draft of the statement, and serve the same, or a copy thereof upon the adverse party.

If such proposed statement be not agreed to by the adverse party, he must, within ten days thereafter, prepare amendments thereto, and serve the same or a copy thereof, upon the moving party. If the amendments be adopted, the statements shall be amended accordingly and then presented to the Judge, who tried or heard the cause, for settlement, or be delivered to the Clerk of the Court for the Judge. If not adopted, the proposed statement and amendments shall, within ten days thereafter, be by the moving party delivered to the Clerk of the Court for the Judge; and thereupon the same proceedings for the settlement of the statement shall be taken by the parties, and Clerk and Judge, as are required for the settlement of bills of exception by section 4430. If the action was heard by a referee, the same proceedings shall be had for the settlement of the statement by him as are required by that section for the settlement of bills of exception by a referee. If no amendments are served within the time designated, or, if served are allowed, the proposed statement and amendments, if any, may be presented to the Judge or referee for settlement without notice to the adverse party. When the notice of the motion designates as the ground of the motion, the insufficiency of the evidence to justify the verdict or other decision, the statement shall specify the particulars in which such evidence is alleged to be insufficient.

When the notice designates as the ground of the motion, errors in law occurring at the trial and excepted to by the moving party, or deemed excepted to, the statement shall specify the particular errors upon which the party will rely. If no such specifications be made, the statement shall be disregarded on the hearing of the motion. It is the duty of the Judge or referee in settling the statement, to strike out of it all redundant and useless matter, and to make the statement truly represent the case, notwithstanding the assent of the parties to such redundant or useless matter, or to any inaccurate statement. When settled, the statement shall be signed by the Judge or referee, with his certificate to the effect that the same is allowed and shall then be filed with the Clerk;

On minutes of court.

4. When the motion is to be made upon the minutes of the court, and the ground of the motion is the insufficiency of the evidence to justify the verdict or other decision, the notice of motion must specify the particulars in which the evidence is alleged to be insufficient; and, if the ground of the motion be errors in law occurring at the trial, and excepted to by the moving party, or deemed excepted to, the notice must specify the particular errors upon which the party will rely. If the notice do not contain the specifications here indicated, when the motion is made on the minutes of the court, the motion must be denied.

Motion, when to be heard.

SEC. 4442. The application for a new trial shall be heard at the earliest practicable period after notice of the motion, if the motion is to be heard upon the minutes of the court, and in other cases, after the affidavits, bill of exceptions, or statement, as the case may be, are filed, and may be brought to a hearing upon motion of either party. On such hearing reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions, documentary evidence, and phonographic report of the testimony on file.

What constitutes record to be used on appeal.

SEC. 4443. The judgment roll and the affidavits, or the records and files in the action, or bill of exceptions, or statement, as the case may be, used on the hearing, with a copy of the order made, shall constitute the record to be used on appeal from the order granting or refusing a new trial, unless the motion be made on the minutes of the court, and in that case the judgment roll and a statement to be subsequently prepared, with a copy of the order, shall constitute the record on appeal. Such subsequent statement shall be proposed by the party appealing, or intending to appeal, within ten days after the entry of the order, or such further time as the court in which the action is pending, or a Judge thereof, may allow, and the same, or a copy thereof be served upon the adverse party, who shall have ten days thereafter to prepare amendments thereto, and serve the same or a copy thereof, upon the party appealing, or intending to appeal; and thereafter proceedings shall be had, and within like periods, for the settlement of the statement, as provided by section 4441, but the statement shall only contain the grounds argued before the court for a new trial, and so much of the evidence or other matter as may be necessary to explain them; and it shall be the duty of the Judge to exclude all other evidence or matter from the statement.

Subsequent statement.

New trial by order of the court.

SEC. 4444. The verdict of a jury may also be vacated, and a new trial granted by the court, in which the action is pending, on its own motion, without the application of either of the parties, when there has been such a plain disregard by the jury of the instructions of the court, or the evidence in the case, as to satisfy the court that the verdict was rendered under a misapprehension of such instructions, or under the influence of passion, or prejudice. The order of the court may be reviewed on appeal in the same manner as orders made on motions for a new trial, and a statement to be used on such appeal may be prepared in the same manner as statements after a motion is heard upon the minutes of the court, as provided in section 4443.

Order how reviewed.

Motion, when may be heard, amended.

SEC. 4445. The motion for a new trial may be brought to a hearing before the Judge who tried or heard the case, at chambers, or in open court, in any county of the Territory.

CHAPTER IX.

MANNER OF GIVING AND ENTERING JUDGMENT.

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4461. Satisfaction of a judgment, how made.

Judgment to be entered in twenty-four hours, etc.

SECTION 4450. When trial by jury has been had, judgment must be entered by the Clerk, in conformity to the verdict, within twenty-four hours after the rendition of the verdict, unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

Case may be brought before the court for argument.

SEC. 4451. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

When counter claim established exceeds plaintiff's demand.

SEC. 4452. If a counter claim, established at the trial, exceed the plaintiff's demand, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

In replevin, judgment to be in the alternative, and with damages.

SEC. 4453. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it be by default or after verdict, or decision, may follow the contract or obligation, and be made payable in the kind of money or currency specified therein, and in all actions for the recovery of money, if the plaintiff allege in his complaint that the same was understood or agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant or established by evidence, the judgment for the plaintiff must be made payable in the kind of money or currency so alleged in the complaint; and in an action against any person for the recovery of money received by such person in a fiduciary capacity, or to the use of another judgment for the plaintiff, must be made payable in the kind of money or currency so received by such person.

Gold coin or currency, judgment.

Judgment book to be kept by the clerk.

SEC. 4454. The Clerk must keep with the records of the court, a book to be called the "Judgment book," in which judgments must be entered.

If a party die after a verdict, judgment may be entered, but not to be a lien

SEC. 4455. If a party die after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

Judgment roll what constitutes.

SEC. 4456. Immediately after entering the judgment, the Clerk must attach together and file the following papers, which constitute the judgment roll:

1. In case the complaint be not answered by any defendant, the summons with the affidavit or proof of service, and the complaint, with a memorandum endorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgment:

2. In all other cases, the pleadings, a copy of the verdict of the jury, or finding of the Court, or referee, all bills of exceptions taken and filed, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment. If there are two or more defendants in the action, and any one of them has allowed judgment to pass against him by default, the summons, with proof of its service upon such defendant, must also be added to the other papers mentioned in this subdivision.

Judgment lien, when it begins and when expires.

SEC. 4457. Immediately after filing the judgment roll, the Clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him, and from the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in the county owned by him at the time or which he may afterwards acquire, until the lien expires. The lien continues for two years unless the judgment be previously satisfied, or unless the enforcement of the judgment be stated on appeal by the execution of a sufficient undertaking as provided in this Code, in which case the lien of the judgment ceases.

Amended.

Docket, how kept, and what to contain.

SEC. 4458. The docket mentioned in the last section is a book which the Clerk keeps in his office with each page divided into columns and headed as follows:

Judgment Debtors; Judgment Creditors; Judgment—time of entry; Where entered in judgment book; Appeals—when taken; Judgment of Appellate Court; Satisfaction of judgment—when entered. If judgment be for the recovery of money or damages, the amount must be stated in the docket under the head of judgment; if the judgment be for any other relief, a memorandum of the general character of the action or of the relief granted must be stated. The names of the defendants must be entered in alphabetical order.

Docket to be open for inspection without charge.

SEC. 4459. The docket kept by the Clerk is open at all times during office hours for the inspection of the public, without charge. The Clerk must arrange the several dockets kept by him in such a manner as to facilitate their inspection.

Transcript to be filed in any county, and judgment to become a lien there.

SEC. 4460. A transcript of the original docket certified by the Clerk, may be filed with the Recorder of any other county, and from the time of the filing the judgment becomes a lien upon all the real property of the judgment debtor, not exempt from execution in such county, owned by him at the time, or which he may afterwards and before the lien expires, acquire. The lien continues for two years, unless the judgment be previously satisfied, or unless the enforcement of the judgment be stayed upon appeal, as hereinbefore provided.

Amended.

Satisfaction of judgment, how made.

SEC. 4461. Satisfaction of a judgment may be entered in the Clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction filed with the Clerk, made in the manner of an acknowledgment of a conveyance of real property by the judgment creditor; or by his endorsement on the face, or on the margin of the record of the judgment, or by the attorney, unless a revocation of his authority is filed.

Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney must give such acknowledgment or make such indorsement, and upon motion the court may compel it, or may order the entry of satisfaction to be made without it.

TITLE IX.

OF THE EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.

CHAPTER I.

THE EXECUTION.

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4473. Money judgments and others, how enforced.
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4478. When property is claimed by a third party, how the right of property is tried.
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Within what time execution may issue.

SECTION 4470. The party in whose favor judgment is given, may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement.

Who may issue the execution, its form, to whom directed, and what it shall require.

SEC. 4471. The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the Clerk, and be directed to the Sheriff, and it must intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money, or currency, as provided in section 4453, the execution must also state the kind of money or currency in which the judgment is payable, and must require the sheriff substantially as follows:

1. If it be against the property of the judgment debtor, it must require the Sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficent personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the Recorder of such county, stating such day, or any time thereafter;

2. If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees; it must require the Sheriff to satisfy the judgment, with interest, out of such property;

3. If it be against the person of the judgment debtor, it must require the Sheriff to arrest such debtor and commit him to the jail of the county until he pay the judgment, with interest, or be discharged according to law;

4. If it be issued on a judgment made payable in a specified kind of money or currency, as provided in section 4453, it must also require the Sheriff to satisfy the same in the kind of money or currency in which the judgment is made payable, and the Sheriff must refuse payment in any other kind of money or currency; and in case of levy and sale of the property of the judgment debtor, he must refuse payment from any purchaser at such sale in any other kind of money or currency than that specified in the execution. The Sheriff collecting money or currency in the manner required by this chapter, must pay to the plaintiff or party entitled to recover the same, the same kind of money or currency received by him, and in case of neglect or refusal so to do, he shall be liable on his official bond to the judgment creditor in three times the amount of the money so collected;

5. If it be for the delivery of the possession of real or personal property, it must require the Sheriff to deliver the possession of the same, describing it, to the party entitled thereto, and may at the same time require the Sheriff to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered, to be specified therein, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property, as provided in the first subdivision of this section.

When made returnable.

SEC. 4472. The execution may be made returnable, at any time not less than ten nor more than sixty days after its receipt by the Sheriff, to the clerk with whom the judgment roll is filed. When the execution is returned, the Clerk must attach it to the judgment roll. If any real estate be levied upon, the Clerk must record the execution and the return thereto at large, and certify the same under his hand as true copies in a book to be called the "Execution book", which book must be indexed with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public without charge. It is evidence of the contents of the originals whenever they, or any part thereof, may be destroyed, mutilated or lost.

Judgment what may direct.

SEC. 4473. When the judgment is for money, or the possession of real or personal property, the same may be enforced by a writ of execution; and if the judgment direct that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or part; when the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer

Arrest of defendant.

to execute the judgment by making the sale and applying the proceeds in conformity therewith; when the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

Execution after five years.

SEC. 4474. In all cases other than for the recovery of money, the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, or by judgment for that purpose, founded upon supplemental pleadings.

When execution may issue against the property of a party after his death.

SEC. 4475. Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced as follows:

1. In the case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;

2. In case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon.

Execution, how and to whom issued.

SEC. 4476. Where the execution is against the property of the judgment debtor, it may be issued to the Sheriff of any county in the Territory. Where it requires the delivery of real or personal property, it must be issued to the Sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

What shall be liable to be seized in execution.

Not to be affected till a levy is made.

SEC. 4477. All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property, seized and held under attachment in the action, are liable to execution. Shares and interest in any corporation or company, and debts and credits, and all other property both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be attached on execution in like manner as upon writs of attachment. Gold dust must be returned by the officer as so much money collected, at its current value, without exposing the same to sale. Until a levy, property is not affected by the execution.

When property is claimed by a third party, how the right of property is tried.

SEC. 4478. If the property levied on be claimed by a third party person as his property, the Sheriff may summon from his county six persons qualified as jurors, between the parties, to try the validity of the claim. He must also give notice of the claim and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury and the witnesses must be sworn by the Sheriff, and if their verdict be in favor of the claimant, the Sheriff may relinquish the levy, unless the judgment creditor give him a sufficient indemnity for proceeding thereon. The fees of the jury, the Sheriff and the witnesses must be paid by the claimant, if the verdict be against him; otherwise by the plaintiff. Each party must deposit with the Sheriff, before the trial, the amount of his fees and the fees of the jury, and the Sheriff must pay the same to the prevailing party.

Property of married woman, exempt from execution.

SEC. 4479. All real and personal estate belonging to any married woman at the time of her marriage, or to which she subsequently becomes entitled in her own right, and all the rents, issues and profits thereof, and all compensation due or owing for her personal services, is exempt from execution against her husband.

What exempt from execution, amended. 13 ses., 79.

SEC. 4480. In addition to the homestead exempted by the civil code, the following property belonging to an actual resident of the Territory, is exempt from execution, except as herein otherwise specially provided:

1. Chairs, tables, desks and books, to the value of two hundred dollars, belonging to judgment debtor;

Amendment.

2. Necessary household, table and kitchen furniture belonging to judgment debtor, including one sewing machine in actual use in a family, or belonging to a woman, stoves, stovepipe and stove furniture, beds, bedding and bedsteads, not exceeding in value three hundred dollars; wearing apparel, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, and family portraits and their necessary frames, provisions actually provided for individual or family use sufficient for three months; two cows with their sucking calves, and two hogs with their sucking pigs;

3. The farming utensils or implements of husbandry of a farmer not exceeding in value the sum of three hundred dollars; also two oxen, or two horses, or two mules and their harness, one cart or wagon, and food for such oxen, horses or mules for one month; also a water right not to exceed one hundred and sixty inches of water, used for the irrigation of lands actually cultivated by him; also all seed, grain or vegetables actually provided, reserved on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of two hundred dollars;

Amended.

4. Tools or implements of a mechanic or artisan necessary to carry on his trade, not exceeding in value the sum of five hundred dollars; the notarial seal and records of a notary public; the instruments and chest of a surgeon physician, surveyor and dentist, necessary to the exercise of their profession, with their scientific and professional libraries; the law professional libraries and office furniture of attorneys, counselors and judges, and the libraries of ministers of the gospel;

5. The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also his sluices, pipes, hose, windlass, derrick, cars, pumps and tools not exceeding in value two hundred dollars; also one saddle animal and one pack animal, together with their saddles and equipments belonging to a miner actually engaged in prospecting, not exceeding in value two hundred and fifty dollars;

6. Two oxen, two horses, or two mules, and their harness; and one cart, wagon, dray or truck by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster or other laborer habitually earns living; and one horse with vehicle and harness, or other equipments used by a physician, surgeon or minister of the gospel, in making his professional visits, with food for such oxen, horses or mules for one month;

7. The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution, or levy of attachment, when it appears by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family residing in this Territory supported wholly or in part by his labor;

8. The shares held by a member of a homestead association duly incorporated, not exceeding in value one thousand dollars—if the person holding the share is not the owner of a homestead under the laws of this Territory;

9. All moneys, benefits, privileges or immunities accruing, or in any manner growing out of any life insurance on the life of the debtor, to an amount represented by an annual premium not exceeding two hundred and fifty dollars;

10. All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any law of this Territory;

11. All arms, uniforms and accouterments required by law to be kept by any person; also one gun;

Amended.

12. All court houses, jails, public offices and buildings, school house, lots, grounds and personal property appertaining thereto; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the court house, jail, and public offices belonging to any county of this Territory, or for the use of schools, and all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this Territory. No article or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereon.

Writ, how executed.

SEC. 4481. The Sheriff must execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property if there be sufficient; collecting or selling the things in action, and selling the other property and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the Sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

Notice of sale, how given.

SEC. 4482. Before the sale of the property on execution, notice thereof must be given, as follows:

1. In case of perishable property, by posting written notice of the time and place of sale in three public places of the precinct or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

2. In case of other personal property, by posting a similar notice in three public places in the precinct or city where the sale is to take place, for not less than five nor more than ten days;

3. In case of real property, by posting a similar notice, particularly describing the property, for twenty days, in three public places of the precinct or city where the property is situated, and also where the property is to be sold, or publishing a copy thereof once a week for the same period, in some newspaper published in the county, if there be one. When the judgment under which the property is to be sold is made payable in a specified kind of money or currency, the several notices required by this section must state the kind of money or currency in which bids may be made at such sale, which must be the same as that specified in the judgment.

SEC. 4483. An officer selling without the notice prescribed by the last section forfeits five hundred dollars to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment (if the judgment be satisfied before sale), forfeits five hundred dollars.

Selling without notice, what penalty attached.

SEC. 4484. All sales of property under execution must be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more can be sold. Neither the officer holding the execution nor his deputy can become a purchaser, or be interested in any purchase, at such sale. When the sale is of personal property, capable of manual delivery, it must be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they must be sold separately, or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion must be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the sheriff must follow such directions.

Sales, how conducted, neither the officer conducting it nor his deputy to be a purchaser.

Real and personal property, how sold.

Judgment debtor, if present, may direct order of sale, and the officer shall follow his directions.

SEC. 4485. If a purchaser refuse to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss be occasioned thereby, the officer may recover the amount of such loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

Proceedings on refusal of purchaser to pay purchase money.

SEC. 4486. When a purchaser refuses to pay, the officer may, in his discretion, thereafter reject any subsequent bid of such person.

When sheriff may refuse bid.

SEC. 4487. The two preceding sections must not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser and the amount collected from the purchaser refusing to pay.

These two sections not to make officer liable, etc.

SEC. 4488. When the purchaser of any personal property capable of manual delivery, pays the purchase money,

Personal property capable of manual delivery, how delivered to purchaser.

the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of the sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

Personal property not capable of manual delivery, how sold and delivered.

Sec. 4489. When the purchaser of any personal property not capable of manual delivery pays the purchase money, the officer making the sale, must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

Real property, when absolute sale or not. Amended.

In the latter case, what the certificate must contain.

Sec. 4490. Upon a sale of real property, the purchaser is substituted to, and acquires all the right, title, interest and claim of the judgment debtor thereto; and all his right, title, interest, and claim thereto at any time during any subsisting lien thereon by attachment in the action, or by the docketing of the judgment. When the estate is less than a leasehold of two years' unexpired term, the sale is absolute. In all other cases the property is subject to redemption, as provided in this chapter. The officer must give to the purchaser a certificate of sale containing:

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. When subject to redemption, it must be so stated.

And when the judgment, under which the sale has been made is made payable in a specified kind of money or currency, the certificate must also show the kind of money or currency in which such redemption may be made, which must be the same as that specified in the judgment. A duplicate of such certificate must be filed for record by the officer in the office of the Recorder of the county.

Real property so sold, by whom it may be redeemed.

Sec. 4491. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;
2. A creditor having a lien by judgment or mortgage on the property sold, on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

When it may be redeemed, and redemption money.

Sec. 4492. The judgment debtor or redemptioner may redeem the property from the purchaser within six months after the sale, on paying the purchaser the amount of his purchase, with twelve per cent thereon in addition, together with the amount of any assessment or taxes which the purchaser may have paid thereon after the purchase, and interest on such amount; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such lien, with interest.

When judgment debtor or other redemptioner may redeem.

Sec. 4493. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, and within six months after the sale, again redeem it from the last redemptioner, on paying the sum paid on such last redemption, with four per cent thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and in addition the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner, within sixty days after the last redemption, and within six months after the sale, on paying the sum paid on the last previous redemption, with four per cent thereon in addition, and the amount of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest. Written notice of redemption must be given to the Sheriff, and a duplicate filed for record with the Recorder of the county; and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof, must in like manner be given to the Sheriff, and filed with the Recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within six months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or, if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereon given, the time for redemption by a redemptioner, has expired, and the last redemptioner, or his assignee, is entitled to a Sheriff's deed at the expiration of six months after the sale; but in all cases the judgment debtor shall have the entire period of six months from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged and proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the Recorder of the county in which the property is situated, and the Recorder must note the record thereof in the margin of the record of the certificate of sale.

Notice of redemption.

Sheriff's deed.

SEC. 4494. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

In the case of redemption, to whom the payments are to be made.

SEC. 4495. A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the sheriff:

What a redemptioner must do in order to redeem.

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, or recorder of the county where the judgment is

docketed or filed; or, if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien.

Until expiration of redemption time, court may restrain waste on the property. What considered waste.

SEC. 4496. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property.

Rents and profits.

SEC. 4497. The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amount of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption demands in writing of such purchaser, or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor, may, within sixty days after said demand, bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

If purchaser of real property be evicted for irregularities in sale, what he may recover and from whom.

SEC. 4498. If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at sheriff's sale, or his successor in interest, fail to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof must, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the

When judgment to be revived. Petition for the purpose, how and by whom made.

sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

Party who pays more than his share may compel contribution.

SEC. 4499. When upon an execution against several persons more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such case, the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within ten days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the clerk must make an entry thereof in the margin of the docket.

CHAPTER II.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

SECTION
4504. Debtor required to answer concerning his property, when.
4505. Proceedings to compel a debtor to appear. In what cases he may be arrested. What bail may be given.
4506. Any debtor of the judgment debtor may pay the latter's creditor.
4507. Examination of debtors, of judgment debtor, or of those having property belonging to him.
SECTION
4508. Witness required to testify.
4509. Judge may order property to be applied on execution.
4510. Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.
4511. Disobedience of orders, how punished.

Debtor required to answer concerning his property, when.

SECTION 4504. When an execution against property of the judgment debtor or of any of several debtors in the same judgment, issued to the Sheriff of the County where he resides, or if he do not reside in this Territory, to the Sheriff of the County where the judgment roll is filed, is returned unsatisfied in whole or in part, the judgment creditor at any time after such return is made, is entitled to an order from the Judge of the court, requiring such judgment debtor to appear and answer upon oath concerning his property, before such Judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a Judge or referee out of the county in which he resides.

Proceedings to compel debtor to appear.

SEC. 4505. After the issuing of an execution against property, and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or of a Judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or Judge may, by an order, require the judgment debtor to appear at a specified time and place before such Judge or a referee appointed by him to answer upon oath concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution. Instead of

In what cases he may be arrested.

the order requiring the attendance of the judgment debtor, the Judge may upon affidavit of the judgment creditor, his agent or attorney, if it appear to him that there is danger of the debtor absconding, order the Sheriff to arrest the debtor and bring him before such Judge. Upon being brought before the Judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the Judge or referee, as may be directed during the pendency of proceedings and until the final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison.

What bail may be given.

Any debtor of the judgment debtor may pay the latter's creditor.

SEC. 4506. After the issuing of an execution against property and before its return, any person indebted to the judgment debtor may pay to the Sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the Sheriff's receipt is a sufficient discharge for the amount so paid.

Examination of debtors of judgment debtor, or of those having property belonging to him.

SEC. 4507. After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment, or upon proof by affidavit or otherwise, to the satisfaction of the Judge, that any person or corporation has money or property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars, the Judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

Witness required to testify.

SEC. 4508. Witnesses may be required to appear and testify before the Judge or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

Judge may order property to be applied on execution.

SEC. 4509. The Judge or referee may order any money or property of a judgment debtor not exempt from execution, in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment.

Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.

SEC. 4510. If it appears that a person or corporation, alleged to have money or property of the judgment debtor, or to be indebted to him, claims an interest in the money or property adverse to him, or denies the debt, the court or Judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation, for the recovery of such interest or debt; and the court or Judge may, by order, forbid a transfer or other disposition of such interest or debt, until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the Judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

Disobedience of orders, how punished.

SEC. 4511. If any person, party, or witness disobey an order of the referee properly made in the proceedings before him under this chapter, he may be punished by the court or Judge ordering the reference, for a contempt.

TITLE X.

ACTIONS IN PARTICULAR CASES.

CHAPTER I.

Actions for the Foreclosure of Mortgages.

SECTION
4520. Proceedings in a foreclosure suit.
4521. Surplus money to be deposited in court
SECTION
4522. Proceedings when debt secured falls due at different times.
4523. Mortgage not deemed a conveyance.
4524. Affidavit required.

SECTION 4520. There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate or personal property, which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the incumbered property (or so much thereof as may be necessary) and the application of the proceeds of the sale to the payment of the costs of the court and the expenses of the sale, and the amount due to the plaintiff; and sales of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in the case of sales under execution; and if it appear from the Sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued. No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

Proceedings in foreclosure suits.

SEC. 4521. If there be surplus money remaining, after payment of the amount due on the mortgage, lien or incumbrance, with costs, the court may cause the same to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

Surplus money to be deposited in court.

SEC. 4522. If the debt for which the mortgage, lien or incumbrance is held is not all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

Proceedings when debt secured falls due at different times.

SEC. 4523. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

A mortgage must not be deemed a conveyance.

Affidavit required. Comp. laws, 502.

SEC. 4524. When an action is brought for the foreclosure of a mortgage or lien, other than for purchase money, an affidavit that all taxes levied upon the mortgage or lien, or upon the debt secured thereby, have been paid, must be attached to the complaint in such action; and in case the same is not attached at the commencement of the action, the court in which the suit is pending, on motion of the defendant therein must make an order staying all proceedings in such action until such affidavit has been filed; and it is the duty of the court, before entering a decree or judgment in any such case, to require such affidavit or proof.

CHAPTER II.

ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS IN CERTAIN CASES, ON REAL PROPERTY.

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4529. Nuisance defined, and actions for.
4530. Waste, actions for.
4531. Trespass for cutting or carrying away trees, etc., actions for.
SECTION
4532. Measure of damages in certain cases under the last section.
4533. Damages in actions for forcible entry, etc., may be trebled.

Nuisance defined, and actions for.

SECTION 4529. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Waste, actions for.

SEC. 4530. If a guardian, tenant for life or years, joint tenant or tenant in common of real property, commit waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Trespass for cutting or carrying away trees, etc., actions for.

SEC. 4531. Any person who cuts down or carries off any wood or underwood, tree, or timber, or girdles, or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, village, or city lot, or cultivated grounds; or on the commons or public grounds of or in any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action, in any court having jurisdiction.

Measure of damages in certain cases under the last section.

SEC. 4532. Nothing in the last section authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

Damages in actions for forcible entry, etc., may be trebled.

SEC. 4533. If a person recover damages for a forcible or unlawful entry in or upon, or detention of any building or any cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

CHAPTER III.

ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY, AND OTHER PROVISIONS RELATING TO ACTIONS CONCERNING REAL ESTATE.

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4538. Parties to an action to quiet title.
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4540. If plaintiff's title terminates pending the suit, what he may recover, and how verdict and judgment to be.
4541. When value of improvements can be allowed as a set-off.
4542. An order may be made to allow a party to survey and measure the land in dispute.
SECTION
4543. Order, what to contain, and how served. If unnecessary injury done, the party surveying to be liable therefor.
4544. When court may grant injunction; during foreclosure; after sale on execution, before conveyance.
4545. Damages may be recovered for injury to the possession after sale and before delivery of possession.
4546. Action not to be prejudiced by alienation, pending suit.
4547. Mining claims, actions concerning to be governed by local rules.

Parties to an action to quiet title.

SECTION 4538. An action may be brought by any person against another who claims an estate or interest in real property adverse to him, for the purpose of determining such adverse claim.

When plaintiff cannot recover costs.

SEC. 4539. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs.

If plaintiff's title terminates pending the suit, what he may recover, and how verdict and judgment to be.

SEC. 4540. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover damages for withholding the property.

When value of improvements can be allowed as a set-off.

SEC. 4541. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value of such improvements must be allowed as a set-off against such damages.

Order for survey and inspection of premises in dispute.
14 ses.

SEC. 4542. Any person having a bona fide claim to the possession, title of, or interest in any real property or mining claim, including any ledges thereof, which is, or which he has good reason to believe, is in the possession of another, either by surface or under-ground holdings or workings, and it is necessary for the ascertainment, enforcement or protection of such rights or interests, that an examination or survey of such property be had, and the person so in the possession thereof, fails or refuses for three days after demand on him made in writing, to permit such examination or survey to be made, the party desiring the same may apply to the court or the Judge thereof, whether he have an action concerning such property, pending in such court or not, for an order for such examination and survey.

Such application must be made upon written petition or statement under oath, setting out a description of the property, interest of the party therein, that the premises are in the possession of a party, naming him, the reason why such survey or examination is asked, the demand made for same, and refusal thereof.

The court or Judge must appoint a time and place for hearing, of which notice, with a copy of the petition, must be served upon the adverse party, at least three days before the hearing and one additional day for each twenty-five miles between the place of service of notice and the hearing, and such hearing must be had and the testimony must be produced in the same manner as provided by section four thousand two hundred and ninety seven (4297) for hearings on injunctions.

If upon such hearing the court or Judge is satisfied either party entitled to any relief or order, for examination or survey of any property in the possession of the other, which has by the papers in the proceedings been put in controversy an order must be granted for such examination, survey and other privileges as the court or Judge may deem just and the order must specify as nearly as possible what the person in whose favor such order is granted, may do.

That thereupon, such person may have free access, with such agents and assistants as may be allowed, to all parts of such property, with right to remove any loose rock, debris or other obstacle, when the same is necessary to the making of a full inspection or survey of such property, but no such removal must be made without the consent of the adverse party or the order of the court or Judge permitting the same.

The court or Judge may also upon proper showing, with the view of producing such evidence as may be needed to determine the rights of the parties, allow work to be done on such property, but any work so permitted must be allowed only after the same is particularly defined and must not be allowed in such manner as to interfere with the workings of the adverse party, and then only when the court is satisfied the adverse party is acting in bad faith and is infringing or attempting so to do, upon the rights of the party asking to do such work, and when there is no other reasonable or convenient mode for the production of the evidence necessary to settle the rights of the parties.

The party so asking to do work upon the premises of, or in the possession of another, must give good and sufficient security for the payment of all damages he may do the adverse party by reason of such work and the court or Judge must at every stage of the proceedings have due regard for the rights of all parties in interest. [Act Feb. 10, 1887. In effect June 1, 1887.]

Order, what to contain and how served, if unnecessary injury done, party to be liable therefor.

SEC. 4543. The order must describe the property, and a copy thereof must be served on the owner or occupant; and thereupon such party may enter upon the property, with necessary surveyors and assistants, and make such survey and measurement; but if any unnecessary injury be done to the property, he is liable therefor.

When court may grant injunction, during foreclosure, after sale on execution.

SEC. 4544. The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or, after a sale on execution, before a conveyance.

Damages may be recovered, for injury to the possession after sale, etc.

SEC. 4545. When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, or any redemptioner, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyance.

SEC. 4546. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

Action not to be prejudiced by alienation pending suit.

SEC. 4547. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this Territory, must govern the decision of the action.

Mining claims, actions concerning to be governed by local rules.

CHAPTER IV.

POSSESSORY ACTIONS FOR PUBLIC LANDS.

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4553. Claim, what to contain.
4554. Claim, how described, must be recorded.
4555. Must improve, how and when.
4556. Action for possession, plaintiff to prove.

SECTION 4552. Any person being a citizen of the United States, or having in accordance with law declared his intention to become a citizen, occupying and settled upon, any of the public lands of the United States in this Territory, for the purpose of cultivating or grazing the same, may commence and maintain any action for interference with, or injury to, his possession of such land against any person interfering with or injuring the same; but if such land contains mines of any of the precious metals, the possession or claim of the person occupying the same for the purposes aforesaid must not prevent the working of such mines by persons desiring to work the same, as fully as if no such claim for agricultural or grazing purposes had been made thereon; *Provided*, That this chapter must not be so construed as to allow a person, subsequent to the location of land for agricultural or grazing purposes, to go upon such lands for the purpose of mining without first paying the owner thereof the value of any growing crops they may destroy; this provision does not extend to any crops planted subsequent to their location for mining purposes; and this chapter must not be construed to authorize the maintenance of any claim upon lands which at the commencement of any such action, may have been selected by the United States, and reserved for any purpose.

Who may settle on public domain. Comp. laws, 751.

SEC. 4553. Every claim, to enable the holder to maintain any action as aforesaid, must contain not more than one hundred and sixty acres of land, to be in a compact form, and so distinctly marked that the boundaries thereof may be easily traced.

Claim, what to contain. Comp. laws, 752.

SEC. 4554. Every such claim must be accurately described in a written notice, which must be recorded in the office of the recorder of the county wherein the claim is situated, in a book to be kept for that purpose, together with an affidavit of the claimant setting forth:

Claim, how described, recording of. Comp. laws, 752.

First. That such claim does not embrace more than one hundred and sixty acres of land;

Second. That he holds no other claim under the provisions of this chapter;

Third. That to the best of his information and belief, no part of said land is claimed under any existing adverse title.

Must improve time. Comp. laws, 752.

SEC. 4555. Within ninety days after the date of such record, said claimant must improve the land so recorded, unless the same has been previously improved by him, or some one through whom he claims, by putting such improvements thereon as partake of the realty to the value of two hundred dollars, and must continue to occupy and cultivate or graze the same or some portion thereof, either in person or by his agent or employe, and no person is entitled to maintain any such action unless he has complied with all the provisions of this chapter.

Action for possession plaintiff what to prove. Comp. laws, 752.

SEC. 4556. In any action for the possession of, or for any injury done to, a lot or parcel of land, situated in any city, town, or village on the public lands, the plaintiff must be required to prove either an actual inclosure of the whole lot claimed by him, or the erection of a dwelling house or other substantial building, on some part thereof, by himself or some person through whom he claims, and proof of such building, with or without inclosure, is sufficient to hold such lot or parcel to the bounds thereof, as indicated by the plat of such city, town, or village, if there be one, and if there be no such plat, then to hold the same, with its full width and extent from and including such building to the nearest adjacent street, where the intervening space has not been previously claimed by adverse possession.

CHAPTER V.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

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4569. Lienholders must be made parties, or a referee be appointed to ascertain their rights.
4570. Lienholders must be notified to appear before the referee appointed.
4571. The court may order a sale or partition and appoint referees therefor.
4572. Partition must be made according to the rights of the parties, as determined by the court.
4573. Referees must make a report of their proceedings.
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4576. Expenses of partition must be apportioned among the parties.
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4578. Estate for life or years may be set-off in a part of the property not sold, when not all sold.
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4606. Abstract of title.

SECTION 4560. When several co-tenants hold and are in possession of real property as parceners, joint tenants or tenants in common, in which one or more of them have an estate of inheritance, or for life or lives, or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property, or a part thereof, if it appear that a partition cannot be made without great prejudice to the owners.

Who may bring actions for partition.

SEC. 4561. The interests of all persons in the property, whether such persons be known or unknown, must be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any one of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so

Interests of all parties must be set forth in the complaint.

that such parties cannot be named, that fact must be set forth in the complaint.

Lienholders not of record need not be made parties.

SEC. 4562. No person having a conveyance of or claiming a lien on the property, or of some part of it, need be made a party to the action, unless such conveyance or lien appear of record.

Plaintiff must file notice of *lis pendens.*

SEC. 4563. Immediately after filing the complaint in the District Court, the plaintiff must file with the Recorder of the county, or of the several counties in which the property is situated, either a copy of such complaint or a notice of the pendency of the action, containing the names of the parties so far as known, the object of the action, and a description of the property to be affected thereby. From the time of the filing it shall be deemed notice to all persons.

Summons must be directed to all persons interested in the property.

SEC. 4564. The summons must be directed to all the joint tenants and tenants in common, and all persons having any interest in, or any liens of record by mortgage, judgment, or otherwise upon the property, or upon any particular portion thereof; and generally, to all persons unknown, who have or claim any interest in the property.

Unknown parties may be served by publication.

SEC. 4565. If a party having a share or interest is unknown, or any one of the known parties reside out of the Territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases. When publication is made, the summons, as published, must be accompanied by a brief description of the property which is the subject of the action.

Answer of defendants, what to contain.

SEC. 4566. The defendants who have been personally served with the summons and a copy of the complaint, or who have appeared without such service, must set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interest in the property, and if such defendants claim a lien on the property by mortgage, judgment or otherwise, they must state the original amount and date of the same, and the sum remaining due thereon; also whether the same has been secured in any other way or not; and if secured, the nature and extent of such security, or they are deemed to have waived their right to such lien.

The rights of all parties may be ascertained in the action.

SEC. 4567. The rights of the several parties, plaintiff as well as defendant, may be put in issue, tried and determined in such action; and when a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the court, before the judgment of sale can be made; and where service of the complaint has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered except that where there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

Partial partition.

SEC. 4568. Whenever from any cause it is, in the opinion of the court, impracticable or highly inconvenient to make a complete partition in the first instance, among all the parties in interest, the court may first ascertain and determine the shares or interest respectively held by the original co-tenants, and thereupon adjudge and cause a parti-

tion to be made as if such original co-tenants were the parties, and sole parties, in interest, and the only parties to the action, and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof as they may desire.

Lienholders must be made parties, or a referee be appointed to ascertain their rights.

SEC. 4569. If it appears to the court, by the certificate of the County Recorder or Clerk, or by the sworn or verified statement of any person who may have examined or searched the records that there are outstanding liens or incumbrances of record upon such real property, or any part or portion thereof, which existed and were of record at the time of the commencment of the action, and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action, by an amendment or supplemental complaint, or appoint a referee to ascertain whether or not such liens or incumbrances have been paid, or if not paid, what amount remains due thereon, and their order among the liens or incumbrances severally held by such persons and the parties to the action, and whether the amount remaining due thereon has been secured in any manner, and if secured, the nature and extent of the security.

Lienholders must be notified to appear before the referee appointed.

SEC. 4570. The plaintiff must cause a notice to be served, a reasonable time previous to the day for appearance before the referee appointed as provided in the last section, on each person having outstanding liens of record, *who is not a party to the action, to appear before the referee* at a specified time and place, to make proof by his own affidavit or otherwise, of the amount due or to become due, contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice, to his agents, under the direction of the court, in such manner as may be proper. The report of the referee thereon must be made to the court, and must be confirmed, modified, or set aside, and a new reference ordered, as the justice of the case may require.

The court may order a sale or partition and appoint referees therefor.

SEC. 4571. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof. Otherwise, upon the requisite proofs being made, it must order a partition, according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor; and must designate the portion to remain undivided for the owners whose interests remain unknown, or are not ascertained.

Partition must be made according to the rights of the parties as determined by the court.

SEC. 4572. In making the partition the referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor, with the necessary assistants, to aid them.

Referees must make a report of their proceedings.

SEC. 4573. The referees must make a report of their proceedings, specifying the manner in which they executed their trust, and describing the property divided, and the shares allotted to each party, with a particular description of each share.

The court may set aside, or affirm report, and enter judgment thereon.

SEC. 4574. The court may confirm, change, modify or set aside the report, and if necessary, appoint new referees. Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive:

Upon whom judgment to be conclusive.

1. On all persons named as parties to the action, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property, or of any part thereof, after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life;

2. On all persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication;

3. On all other persons claiming from such parties or persons or either of them. And no judgment is invalidated by reason of the death of any party before final judgment or decree; but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent, as if it had been entered before his death.

Judgment not to affect tenants for years to the whole property.

SEC. 4575. The judgment does not affect tenants for years less than ten to the whole of the property which is the subject of the partition.

Expenses of partition must be apportioned among the parties.

SEC. 4576. The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court, in its discretion, to the referees, must be apportioned among the different parties to the action, equitably.

A lien on an undivided interest of any party is a charge only on the share assigned to such party.

SEC. 4577. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party; but such share must first be charged with its just proportion of the costs of the partition, in preference to such lien.

Estate for life or years may be set off in a part of the property not sold, when not all sold.

SEC. 4578. When a part of the property only is ordered to be sold, if there be an estate for life or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Application of proceeds of sale of incumbered property.

SEC. 4579. The proceeds of the sale of incumbered property must be applied under the direction of the court as follows:

1. To pay its just proportion of the general costs of the action;

2. To pay the costs of the reference;

3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due and to

become due; the amount due to be verified by affidavit at the time of payment;

4. The residue among the owners of the property sold, according to their respective shares therein.

Party holding other securities may be required first to exhaust them.

SEC. 4580. Whenever any party to an action who holds a lien upon the property, or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just reduction to be made from the amount of the lien on the property on account thereof.

Proceeds of sale, disposition of.

SEC. 4581. The proceeds of sale and the securities taken by the referees, or any part thereof, must be distributed by them to the persons entitled thereto, whenever the court so directs. But in case no direction be given, all of such proceeds and securities must be paid into court or deposited therein, or as directed by the court.

When paid into court the cause may be continued for the determination of the claims of the parties.

SEC. 4582. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which must be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original action.

Sales by referees must be at public auction.

SEC. 4583. All sales of real property made by referees, under this chapter, must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property or any part of it is to be subject to a prior estate, charge or lien, that must be stated in the notice.

The court must direct the terms of sale or credit.

SEC. 4584. The court must, in the order for sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit, and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties out of the Territory.

Referees may take securities for purchase money.

SEC. 4585. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant in the name of the guardian of such infant; and for other shares in the name of the Clerk of the Court and his successors in office.

Tenants whose estate has been sold shall receive compensation.

SEC. 4586. The person entitled to a tenancy for life or years, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate, and which the person so entitled may consent to accept instead thereof, by an instrument in writing filed with the Clerk of the Court. Upon the filing of such consent, the Clerk must enter the same in the minutes of the court.

The court may fix such compensation.

SEC. 4587. If such consent be not given, filed and entered as provided in the last section, at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate, and must order the same to be paid to such party, or deposited in court for him, as the case may require.

The court must protect tenants unknown.

SEC. 4588. If the persons entitled to such estate for life or years be unknown, the court must provide for the protection of their rights in the same manner as far as may be, as if they were known and had appeared.

The court must ascertain and secure the value of future contingent or vested interests.

SEC. 4589. In all cases of sales when it appears that any person has a vested or contingent future right or estate in any of the property sold, the court must ascertain and settle the proportional value of such contingent or vested right or estate, and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

Terms of sale must be made known at the time. Lots must be sold separately.

SEC. 4590. In all cases of sales of property the terms must be made known at the time; and if the premises consist of distinct farms or lots, they must be sold separately.

Who may not be purchasers.

SEC. 4591. Neither of the referees, nor any person for the benefit of either of them, can be interested in any purchase; nor can a guardian of an infant party be interested in the purchase of any real property being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section are void.

Referees must make a report of the sale to the court.

SEC. 4592. After completing a sale of the property, or any part thereof ordered to be sold, the referees must report the same to the court with a description of the different parcels of land sold to each purchaser; the name of the purchaser; the price paid or secured; the terms and conditions of the sale, and the securities, if any, taken. The report must be filed in the office of the Clerk.

If confirmed, conveyances may be executed.

SEC. 4593. If the sale be confirmed by the court, an order must be entered directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

Proceeding if a lienholder becomes a purchaser.

SEC. 4594. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyance must be recorded and will be a bar against parties.

SEC. 4595. The conveyances must be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them, or either of them, and against all persons having unrecorded deeds or liens at the commencement of the action.

Proceeds of sale belonging to parties unknown must be invested for their benefit.

SEC. 4596. When there are proceeds of sale belonging to an unknown owner, or to a person without the Territory, who has no legal representative within it, the same must be invested in securities at interest for the benefit of the persons entitled thereto.

Investment must be made in the name of.

SEC. 4597. When the security of the proceeds of sale is taken, or when an instrument of any such proceeds is made it must be done, except as herein otherwise provided, in the name of the Recorder of the county where the papers are filed, and his successors in office, who must hold the same for the use and benefit of the parties interested, subject to the order of the court.

When the interests of the parties are ascertained. Securities must be taken in their names.

SEC. 4598. When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing, under their hands, delivered to the referee, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of and payable to the parties respectively entitled thereto, and must be delivered to such parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the Clerk.

Duties of making investments.

SEC. 4599. The Recorder in whose name a security is taken, or by whom an investment is made, and his successors in office, must receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and must deposit with the County Treasurer all securities taken and keep an account in a book provided and kept for that purpose in the Recorder's office, free for inspection by all persons, of investments in moneys received by him thereon, and the disposition thereof.

When unequal partition is ordered, compensation may be adjudged in certain cases.

SEC. 4600. When it appears that partition cannot be made equal between the parties, according to their respective rights, wtihout prejudice to the rights and interests of some of them, and a partition be ordered, the court may adjudge compensation to be made by one party to another, on account of the inequality; but such compensation shall not be required to be made to others by owners unknown, nor by an infant; unless it appears that such infant has personal property sufficient for that purpose, and that his interest will be promoted thereby. And in all cases the court has power to make compensatory adjustment between the respective parties according to the ordinary principles of equity.

The share of an infant may be paid to his guardian.

SEC. 4601. When the share of an infant is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law or directed by order of the court.

The guardian of an insane person may receive the proceeds of such party's interest.

SEC. 4602. The guardian who may be entitled to the custody and management of the estate of an insane person or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive in behalf of such person, his share of the proceeds of such real property from the referees on executing, with sufficient sureties, an undertaking approved by a Judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled or to his legal representative.

A guardian may consent to partition without action, and execute releases.

SEC. 4603. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set-off to such infant or other person entitled and may execute a release in his behalf to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

Costs of partition a lien upon the shares of the parcencers.

SEC. 4604. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants, for the common benefit, fees of referees, and other disbursements, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

The court by consent, may appoint a single referee.

SEC. 4605. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter; and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

Abstract of title.

SEC. 4606. If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned, and such abstract shall have been procured by the plaintiff, or if the plaintiff shall have failed to have the same made before the commencement of the action, and any one of the defendants shall have had such abstract afterwards made, the cost of the abstract, with interest thereon from the time the same is subject to the inspection of the respective parties to the action, must be allowed and taxed.

CHAPTER VI.

ACTIONS FOR THE USURPATION OF AN OFFICE OR FRANCHISE.

SECTION
4611. Certain writ abolished.
4612. Action may be brought against any party usurping, etc., any office or franchise.
4613. Name of person entitled to office may be set forth in the complaint. If fees have been received by the usurper, he may be arrested.
4614. Judgment may determine the rights of both incumbent and claimant.

SECTION
4615. When rendered in favor of applicant.
4616. Damages may be recovered by successful applicant.
4617. When several persons claim the same office their rights may be determined by a single action.
4618. If defendant found guilty, what judgment to be rendered against him.
4619. Undertaking.

Certain writ abolished.

SECTION 4611. The writ of *scire facias* is abolished.

Action may be brought against any party usurping, etc., any office or franchise.

SEC. 4612. An action may be brought in the name of the people of the Territory against any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this Territory, without authority of law. Such action shall be brought by the District Attorney of the proper county, when the office or franchise relates to a county, precinct, or city, and when such office or franchise relates to the Territory, bythe Attorney General; and it shall be the duty of the proper officer, upon proper showing, to bring such action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised without authority of law. Any person rightfully entitled to an office or franchise may bring an action in his own name against the person who has usurped, intruded into, or who holds or exercises the same.

Name of person entitled to office, may be set forth in the complaint, amended.

SEC. 4613. Whenever such action is brought in the name of the people of the Territory, the District Attorney at the request of the person entitled to the office or franchise, in addition to the cause of action in behalf of the people of the Territory, may set forth the name of the person so entitled, with a statement of his right thereto, and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of usurpation thereof, an order may be granted by the Judge, or court wherein the case is pending, for the arrest of such defendant, and holding him to bail; and thereupon he may be arrested and held to bail, in the same manner and with the same effect, and subject to the same rights, and liabilities, as in other civil actions where the defendant is subject to arrest.

Judgment may determine the rights of both incumbent and claimant.

SEC. 4614. In every such case judgment may be rendered upon the right of the defendant, and also upon the right of the party so alleged to be entitled, or only upon the right of the defendant as the form of the action and justice may require.

When rendered in favor of applicant.

SEC. 4615. If the judgment be rendered upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office.

Damages may be recovered by successful applicant.

SEC. 4616. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover by action, the damages which he may have sustained by reason of the usurpation of the office by the defendant.

When several persons claim the same office, etc.

SEC. 4617. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons in order to try their respective rights to such office or franchise.

If defendant found guilty, what judgment to be rendered against him.

SEC. 4618. When a defendant against whom such action has been brought is adjudged guilty of usurping or intruding into or unlawfully holding any office, franchise or privilege, judgment must be rendered that such defendant be excluded from the office, franchise or privilege, and that he pay the costs of the action. The court may also in its discretion, in actions to which the people of the Territory are a party, impose upon the defendant a fine not exceeding five thousand dollars, which fine, when collected, must be paid into the treasury of the Territory.

Undertaking when required in actions for usurpation.

SEC. 4619. When the action is brought upon the information or application of a private party, the District Attorney may require such party to enter into an undertaking, with sureties to be approved by the said officer, conditioned that such party or the sureties will pay any judgment for costs or damages recovered against the plaintiff, and all the costs and expenses incurred in the prosecution of the action.

TITLE XI.

OF PROCEEDINGS IN CIVIL ACTIONS IN PROBATE COURTS.

SECTION
4629. Practice and proceedings in Probate Courts.

Practice and proceedings in probate courts in civil actions. Act of Jan. 31, 1883.

SECTION 4629. The process, provisional remedies, supplementary proceedings, and the rules of practice and pleading in the Probate Court, when the debt or sum claimed does not exceed three hundred dollars, shall be the same as in Justices' Courts; in all other cases within its civil jurisdiction, the same as in the District Courts, except when other provision is made by this Code.

TITLE XII.

OF PROCEEDINGS IN JUSTICES' COURTS.

CHAPTER I.

PLACE OF TRIAL IN JUSTICES' COURTS.

SECTION

4639. Action, when commenced.
4640. Place of trial may be changed in certain cases.
4641. Limitation on the right to change.
4642. To what court transferred.
4643. Proceedings after changing place of trial.
4644. Effect of an order changing place of trial.
4645. Transfer of cases to the District Court.

Action, when may be commenced.

SECTION 4639. Actions in Justices' Courts must be commenced, and subject to the right to change the place of trial (as in this chapter provided), must be tried:

1. If there is no Justice's Court for the precinct or city in which the defendant resides, in any city or precinct of the county in which he resides;

2. When two or more persons are jointly, or jointly and severally bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different precincts or different cities of the same county, or in different counties; in the precinct or city in which any of the persons liable may reside;

3. In cases of injury to the person or property; in the precinct or city where the injury was committed, or where the defendant resides;

4. If for the recovery of personal property, or the value thereof, or damages for taking or detaining the same; in the precinct or city in which the property may be found, or in which the property was taken, or in which the defendant resides;

5. When the defendant is a non-resident of the county; in any precinct or city wherein he may be found;

6. When the defendant is a non-resident of the Territory in any precinct or city in the Territory;

7. When a person has contracted to perform an obligation at a particular place and resides in another county, precinct or city; in the precinct or city in which such obligation is to be performed or in which he resides;

8. When the parties voluntarily appear and plead without summons; in any precinct or city in the Territory;

9. In all other cases; in the precinct or city in which the defendant resides.

Place of trial may be changed in certain cases.

SEC. 4640. The court may at any time before the trial, on motion, change the place of trial in the following cases:

1. When it appears to the satisfaction of the Justice before whom the action is pending, by affidavit of either party, that such Justice is a material witness for either party;

2. When either party makes and files an affidavit that he believes that he cannot have a fair and impartial trial before such Justice by reason of the interest, prejudice or bias of the Justice;

3. When, from any cause, the Justice is disqualified from acting.

Limitation on the right to change.

SEC. 4641. The place of trial cannot be changed in Justice's Court on motion of the same party, more than once, upon any or all of the grounds specified in the first and second subdivisions of the preceding section.

To what court transferred.

SEC. 4642. When the court orders the place of trial to be changed, the action must be transferred for trial to a court the parties agree upon; and if they do not agree, then to the Probate Court or to another Justice's Court in the same county.

Proceedings after order changing place of trial.

SEC. 4643. After an order has been made transferring the action for trial to another court, the following proceedings must be had:

1. The Justice ordering the transfer must immediately transmit to the Clerk of the Probate Court, or to the Justice to whom it is transferred, on payment of his costs by the party applying, all the papers in the action, together with a certified transcript from his docket of the proceedings therein;
2. Upon the receipt by him of such papers, the Clerk or Justice must issue a notice stating when and where the trial will take place, which must be served upon the parties at least one day before the time fixed for trial.

Effect of an order changing place of trial.

SEC. 4644. From the time the order changing the place of trial is made, the court to which the action is thereby transferred has the same jurisdiction over it as though it had been commenced in such court.

Transfer of cases to the district court.

SEC. 4645. The parties to an action in a Probate or Justice's Court cannot give evidence upon any question which involves the title or possession of real property, nor can any issue presenting such question be tried by such court: and if it appear from the answer of the defendant, verified by his oath, or that of his agent or attorney, that the determination of the action will necessarily involve the question of title or possession to real property, the Probate Court or Justice must suspend all further proceedings in the action and certify the pleadings, and, if any of the pleadings are oral, a transcript of the same, from his docket to the Clerk of the District Court of the county; and from the time of filing such pleadings or transcript with the Clerk, the District Court has over the action the same jurisdiction as if it had been commenced therein; *Provided*, That this section shall not be construed to extend to or include actions of Forcible Entry, Forcible Detainer or Unlawful Detainer.

Amended.

CHAPTER II.

MANNER OF COMMENCING ACTIONS IN JUSTICES' COURTS.

SECTION
4650. Actions, how commenced.
4651. Summons may issue within a year.
4652. Defendant may waive summons.
4653. Parties may appear in person or by attorney.
4654. When guardian necessary, how appointed.
4655. Summons, how issued, directed, and what to contain.
4656. Time for appearance of defendant.
4657. Alias summons.
4658. Same.
4659. Summons, limitation upon time of service.
4660. Summons, by whom and how served and returned.
4661. Hour for appearance.

Actions, how commenced.

SECTION 4650. An action in a Justice's Court is commenced by filing a complaint.

Summons may issue one year.

SEC. 4651. The court must indorse on the complaint the date upon which it was filed, and at any time within one year thereafter the plaintiff may have summons issued.

Defendant may waive summons.

SEC. 4652. At any time after the complaint is filed the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

Parties may appear in person or by attorney.

SEC. 4653. Parties in a Justice's Court may appear and act in person or by attorney; and any person, except the officer by whom the summons or jury process was served, may act as attorney.

Infant, insane, or incompetent person to appear by guardian.

SEC. 4654. When an infant, insane, or incompetent person is a party, he must appear either by his general guardian, if he have one, or by a guardian *ad litem* appointed by the Justice. When a guardian *ad litem* is appointed by the Justice, he must be appointed as follows:

1. If the infant, insane, or incompetent person, be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant, if he be of the age of fourteen years; if under that age, or if insane or incompetent, upon the application of a relative or friend;

2. If the infant, insane or incompetent person, be defendant, the appointment must be made at the time the summons is returned, or before the answer, upon the application of the infant, if he be of the age of fourteen years and apply at or before the summons is returned; if he be under the age of fourteen, or be insane or incompetent, or neglect so to apply, then upon the application of a relative or friend, or any other party to the action, or by the justice on his own motion.

Amended.

Summons, how issued, directed and what to contain, amended.

SEC. 4655. The summons must be directed to the defendant, signed by the Justice, and must contain:

1. The title of the court, the name of the county, the name of the precinct or city, in which the action is commenced, and the names of the parties thereto;

2. A sufficient statement of the cause of action, in general terms, to apprise the defendant of the nature of the claim against him;

3. A direction that the defendant appear and answer at a time specified in the summons;

4. In an action arising on a contract, for the recovery of money or damages only, a notice that unless the defendant so appears and answers, the plaintiff will take judgment for the sum claimed by him (stating it);

5. In other actions, a notice that unless defendant so appears and answers, the plaintiff will apply to the court for the relief demanded. If the plaintiff has appeared by attorney, the name of the attorney must be indorsed on the summons.

Time for appearance of defendant.

SEC. 4656. The time specified in the summons for the appearance of the defendant must be as follows:

1. If an order of arrest is endorsed upon the summons, forthwith;

2. In all other cases, not less than three nor more than twenty days from its date.

Alias summons.

SEC. 4657. If the summons is returned without being served upon any or all of the defendants, the Justice, upon the demand of the plaintiff, may issue an alias summons, in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed ninety days from its date.

Alias summons.

SEC. 4658. The Justice may within a year from the date of the filing of the complaint, issue as many alias summons as may be demanded by the plaintiff.

Summons, limitation on service of.

SEC. 4659. The summons cannot be served out of the county in which the action is brought, except where the action is brought upon a joint contract, or obligation of two or more persons who reside in different counties, and the summons has been served upon the defendant, resident of the county in which case the summons may be served upon the other defendants out of the county; and except, also, when an action is brought against a party who has contracted in writing to perform an obligation at a particular place, and resides in a different county, in which case summons may be served in the county where he resides. When the defendant resides in the county, the summons cannot be served within two days of the time fixed for the appearance of the defendant; when he resides out of the county, and the summons is served out of the county, the summons cannot be served within twenty days of such time.

Summons, by whom and how served.

SEC. 4660. The summons in the cases mentioned in the preceding section may be served by a sheriff or constable of any of the counties of this Territory; *Provided,* That when a summons issued by a Justice of the Peace, is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the Clerk of the District Court of such county, to the effect that the person issuing the same was an acting Justice of the Peace at the date of the summons; or the summons may be served by any male resident, over the age of twenty-one years, not a party to the suit, within the county where the action is brought and must be served and returned as provided in actions commenced in the District Court; or it may be served by publication and the sections of this Code providing for the publication of summons issued out of the District Court are applicable to the Probate and Justices' Courts, the necessary changes and substitutions being made therein.

Hour for appearance.

SEC. 4661. The parties are entitled to one hour in which to appear after the time fixed in the summons, but are not bound to remain longer than the time unless both parties have appeared, and the Justice being present, is engaged in the trial of another cause.

CHAPTER III.

PLEADINGS IN JUSTICES' COURTS.

SECTION
4666. Form of pleadings.
4667. Pleadings.
4668. Complaint defined.
4669. When demurrer to complaint may be put in.
4670. Answer.
4671. If the defendant omits to set up counter claim.

SECTION
4672. When plaintiff may demur to answer.
4673. Proceedings on demurrer.
4674. Amendment of pleadings.
4675. Answer or demurrer to amended pleadings.

SECTION 4666. Pleadings in Justices' Courts:

Form of pleadings.

1. Are not required to be in any particular form, but must be such as to enable a person of common understanding to know what is intended;

2. May, except the complaint, be oral or in writing;
3. Need not be verified, unless otherwise provided in this Code;
4. If in writing, must be filed with the Justice;
5. If oral, and entry of their substance must be made in the docket.

Pleadings.

SEC. 4667. The pleadings are:

1. The complaint by the plaintiff;
2. The demurrer to the complaint;
3. The answer by the defendant;
4. The demurrer to the answer.

Complaint defined.

SEC. 4668. The complaint in these courts is a concise statement, in writing, of the facts constituting the plaintiff's cause of action; or a copy of the account, note, bill, bond, or instrument upon which the action is based.

When demurrer to complaint may be put in.

SEC. 4669. The defendant may, at any time before answering, demur to the complaint.

Answer.

SEC. 4670. The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue; also a statement in a plain and direct manner, of any other facts constituting a defense or counter claim, upon which an action might be brought by the defendant against the plaintiff in that court.

If the defendant omits to set up counter claim

SEC. 4671. If the defendant omit to set up a counter claim in the cases mentioned in the last section, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

When plaintiff may demur to answer.

SEC. 4672. When the answer contains new matter in avoidance, or constituting a defense or a counter claim, the plaintiff may, at any time before the trial, demur to the same for insufficiency, stating therein the grounds of such demurrer.

Proceedings on demurrer.

SEC. 4673. The proceedings on demurrer are as follows:

1. If the demurrer to the complaint is sustained, the plaintiff may, within such time, not exceeding two days, as the court allows, amend his complaint;
2. If the demurrer to a complaint is overruled, the defendant may answer forthwith;
3. If the demurrer to an answer is sustained, the defendant may amend his answer within such time, not exceeding two days, as the court may allow;
4. If the demurrer to an answer is overruled, the action must proceed as if no demurrer had been interposed.

Amendment of pleadings.

SEC. 4674. Either party may, at any time before the conclusion of the trial, amend any pleading; but if the amendment is made after the issue, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The court may also, in its discretion, when an adjournment will, by the amendment, be rendered necessary, require as a condition to the allowance of such amendment, made after issue joined, the payment of costs to the adverse party, to be fixed by the court, not exceeding twenty dollars. The court may also, on such terms as may be just, and on payment of costs, relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise, or excusable neglect; but the application for such relief must be made within ten days after the entry of the judgment, and upon an affidavit showing good cause therefor.

Answer or demurrer to amended pleadings.

SEC. 4675. When a pleading is amended, the adverse party may answer or demur to it within such time, not exceeding two days, as the court may allow.

CHAPTER IV.

PROVISIONAL REMEDIES IN JUSTICES' COURTS.

SECTION
4680. Order for arrest, and arrest of defendant.
4681. Order executed in any part of the Territory.
4682. Affidavit and undertaking for order of arrest.
4683. A defendant arrested must be taken before the Justice or Judge immediately.
4684. The officer must give notice to the plaintiff of arrest.

SECTION
4685. The officer must detain the defendant.
4686. Writ of attachment shall issue upon affidavit.
4687. Undertaking on attachment must be required.
4688. Writ of attachment, substance of. Officer may take an undertaking instead of levying.
4689. Certain provisions apply to all attachments in Justices' Courts.
4690. How claim and delivery enforced.

Order of arrest, and arrest of defendant.

SECTION 4680. An order to arrest the defendant may be indorsed on a summons issued out of a Justice's Court, and the defendant may be arrested thereon by the Sheriff or Constable, at the time of serving the summons, and brought before the Justice, and there detained until duly discharged, in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract when the defendant is about to depart from the Territory, with intent to defraud his creditors;
2. In an action for a fine or penalty, or for money or property embezzled or fraudulently misapplied, or converted to his own use by one who received it in a fiduciary capacity;
3. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought;
4. When the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors. But no female can be arrested in any action.

Order executed in any part of the Territory.

SEC. 4681. In cases under the first subdivision of the last section, or when the defendant is about to depart from the Territory, the order of arrest may be executed, and the defendant arrested in any part of the Territory.

Affidavit and undertaking for order of arrest.

SEC. 4682. Before an order for an arrest can be made, the party applying must prove to the satisfaction of the Justice by the affidavit of himself, or some other person, the facts upon which the application is founded. The plaintiff must also execute and file a written undertaking in the sum of three hundred dollars, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

Defendant arrested must be taken before the justice immediately.

SEC. 4683. The defendant, immediately upon being arrested. must be taken to the office of the Justice who made the order, and if he is absent or unable to try the action, or if it appears to him by the affidavit of the defendant that he is a material witness in the action, the officer must immediately take the defendant before another justice of the precinct or city, if there is another, and if not, then before the justice of an adjoining precinct or city, who must take jurisdiction of the action, and proceed thereon, as if the summons had been issued and the order of arrest made by him.

Amended.

The officer must give notice to the plaintiff of arrest.

SEC. 4684. The officer making the arrest must immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

The officer must detain the defendant.

SEC. 4685. The officer making the arrest must keep the defendant in custody until he is discharged by order of the court.

Writ of attachment shall issue upon affidavit.

SEC. 4686. A writ to attach the property of the defendant must be issued by the Justice at the time of, or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit for attachment out of the District Court.

Undertaking on attachment must be required.

SEC. 4687. Before issuing the writ, the Justice must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than fifty nor more than three hundred dollars, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ of attachment, substance of.

Officer may take an undertaking instead of levying.

SEC. 4688. The writ may be directed to the Sheriff or any Constable of the county, or the Sheriff of any other county, and must require him to attach and safely keep all the property of the defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant give him security by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand besides costs; in which case to take such undertaking.

Certain provisions of code apply to.

SEC. 4689. The sections of this Code providing for attachments out of the District Court, except as in this chapter expressly provided, are applicable to attachments issued out of Justices' Courts, the necessary changes and substitutions being made therein.

How claim and delivery enforced.

SEC. 4690. In an action to recover possession of personal property, the plaintiff may at the time of issuing summons or at any time thereafter before answer, claim the delivery of such property to him; and the sections of this Code providing the practice in proceedings for claim and delivery of personal property in the District Court are applicable to like proceedings in Justices' Courts, the necessary changes and substitutions being made therein.

CHAPTER V.

JUDGMENT BY DEFAULT.

SECTION
4695. Judgment when defendant fails to appear.
SECTION
4696. Judgment against defendant on demurrer.

Judgment when defendant fails to appear.

SECTION 4695. When the defendant fails to appear and answer or demur at the time specified in the summons, or within one hour thereafter, the court must hear the evidence offered by the plaintiff, and must render judgment in his favor for such a sum (not exceeding the amount stated in the summons), as appears by such evidence to be just.

Judgment against defendant on demurrer.

SEC. 4696. In the following cases the same proceedings must be had, and judgment must be rendered in like manner, as if the defendant had failed to appear and answer or demur:

1. If the complaint has been amended, and the defendant fails to answer it as amended, within the time allowed by the court;
2. If the demurrer to the complaint is overruled, and the defendant fails to answer at once;
3. If the demurrer to the answer is sustained, and the defendant fails to amend the answer within the time allowed by the court.

CHAPTER VI.

TIME OF TRIAL AND OF POSTPONEMENTS.

SECTION
4701. Time when trial must be commenced
4702. When court may, of its own motion, postpone trial.
4703. Postponement by consent.
SECTION
4704. Postponement upon application of a party.
4705. No continuance for more than ten days to be granted, unless upon filing of undertaking.

Time when trial must be commenced.

SECTION 4701. Unless postponed as provided in this chapter, or unless transferred to another court, the trial of the action must commence at the expiration of one hour from the time specified in the summons for the appearance of defendant, and the trial must be continued, without adjournment for more than twenty-four hours at any one time, until all the issues therein are disposed of.

When court may of its own motion, postpone trial.

SEC. 4702. The court may, of its own motion, postpone the trial:

1. For not exceeding one day, if, at the time fixed by law or by an order of the court for the trial, the court is engaged in the trial of another action;
2. For not exceeding two days, if, by an amendment of the pleadings, or the allowance of time to make such amendment or to plead, a postponement is rendered necessary;
3. For not exceeding three days, if the trial is upon issues of fact, and a jury has been demanded.

Postponement by consent.

SEC. 4703. The court may, by consent of the parties, given in writing or in open court, postpone the trial to a time agreed upon by the parties.

Postponement upon application of a party.

SEC. 4704. The trial may be postponed upon the application of either party for a period not exceeding four months:

1. The party making the application must prove, by his own oath or otherwise, that he cannot, for want of material testimony, which he expects to procure, safely proceed to trial, and must show in what respect the testimony expected is material, and that he has used due diligence to procure it, and has been unable to do so;

2. If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody, but the action may proceed notwithstanding, and the defendant is subject to arrest on execution, in the same manner as if he had not been discharged;

3. If the application is on the part of a defendant under arrest, before it can be granted he must execute an undertaking, with two or more sufficient sureties, to be approved by, and in a sum to be fixed by, the court, to the effect that he will render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein; or that the sureties will pay to the plaintiff the amount of any judgment which he may receive in the action, not exceeding the amount specified in the undertaking. On filing the undertaking specified in this subdivision, the court must order the defendant to be discharged from custody;

4. The party making the application must, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, may be then taken by deposition before the court, and that the testimony so taken may be read on the trial with the same effect, and subject to the same objections, as if the witness was produced; but the court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper, the trial must not be postponed.

No continuance for more than ten days to be granted, unless upon filing of undertaking.

SEC. 4705. No adjournment must, unless by consent, be granted for a period longer than ten days, upon the application of either party, except upon condition that such party file an undertaking in an amount fixed by the court, with two sureties, to be approved by the court, to the effect that they will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

CHAPTER VII.

TRIALS IN JUSTICES' COURTS.

SECTION
4711. Issue defined, and the different kinds.
4712. Issue of law, how raised.
4713. Issue of fact, how raised.
4714. Issue of law, how tried.
4715. Issue of fact, how tried.
4716. Jury, how waived.

SECTION
4717. Either party failing to appear, trial may proceed at request of other party.
4718. Challenges to jurors.
4719. Manner of pleading a written instrument.
4720. If a copy of an instrument be filed, the signatures will be deemed admitted, unless denied under oath.

Issue defined, and the different kinds.

SECTION 4711. Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and is controverted by the other. They are of two kinds:

1. Of law; and
2. Of fact.

Issue of law, how raised.

SEC. 4712. An issue of law arises upon a demurrer to the complaint or answer, or to some part thereof.

Issue of fact, how raised.

SEC. 4713. An issue of fact arises:

1. Upon a material allegation in the complaint controverted by the answer; and,
2. Upon new matter in the answer, except an issue of law is joined thereon.

Issue of law, how tried.

SEC. 4714. An issue of law must be tried by the court.

Issue of fact, how tried.

SEC. 4715. An issue of fact must be tried by a jury, unless a jury is waived, in which case it must be tried by the court.

Jury, how waived.

SEC. 4716. A jury may be waived:

1. By the consent of parties, entered in the docket;
2. By a failure of either party to demand a jury before the commencement of the trial of an issue of fact;
3. By the failure of either party to appear at the time fixed for the trial of an issue of fact.

Either party failing to appear.

SEC. 4717. If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

Challenges to jurors.

SEC. 4718. The challenges are either peremptory or for cause. Each party is entitled to three peremptory challenges. Either party may challenge for cause on any grounds set forth as grounds of such challenge in the District Court. Challenges for cause must be tried by the court.

Manner of pleading a written instrument.

SEC. 4719. When the cause of action or counter claim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may, by an order under his hand, require the original to be exhibited to the inspection of, and a copy to be furnished to, the adverse party, at such time as may be fixed in the order; or, if such order is not obeyed, the account or instrument cannot be given in evidence.

If a copy of an instrument be filed, the signatures deemed admitted.

SEC. 4720. If the plaintiff annex to his complaint or file with the court at the time of issuing the summons, the original or a copy of the promissory note, bill of exchange, or other written obligation for the payment of money; upon which the action is brought, the defendant is deemed to admit the genuineness of the signatures of the makers, indorsers, or assignors thereof, unless he specifically deny the same in his answer, and verify the answer by his oath.

CHAPTER VIII.

JUDGMENTS, OTHER THAN BY DEFAULT, IN JUSTICES' COURTS.

SECTION
4725. Judgment by confession.
4726. Judgment of dismissal entered in certain cases without prejudice.
4727. Judgment upon verdict.
4728. Judgment after trial by the court.
4729. Judgment, when the defendant is subject to arrest.
4730. If the sum found due exceeds the jurisdiction, the excess may be remitted.

SECTION
4731. Offer to compromise before trial.
4732. Costs must be included in the judgment.
4733. Abstract of judgment.
4734. Abstract may be filed and docketed in District Clerk's office.
4735. Effect of docketing.
4736. Judgment not a lien unless abstract is docketed.

Judgment by confession.

SECTION 4725. Judgments upon confession may be entered in any Justice's Court specified in the confession, in any amount of which the court has jurisdiction.

Judgment, dismissal.

SEC. 4726. Judgment that the action be dismissed, without prejudice to a new action, may be entered with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;
2. When he fails to appear at the time specified in the summons, or at the time to which the action has been postponed, or within one hour thereafter;
3. When, after a demurrer to the complaint has been sustained, the plaintiff fails to amend it within the time allowed by the court;
4. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county, or precinct, or city; but if the objection is taken and overruled, it is cause only of reversal on appeal, and does not otherwise invalidate the judgment; if not taken at the trial it is waived.

Judgment upon verdict.

SEC. 4727. When a trial by jury has been had, judgment must be entered by the court at once, in conformity with the verdict.

Judgment after trial by the court.

SEC. 4728. When the trial is by the court, judgment must be entered at the close of the trial.

Judgment, how entered when defendant subject to arrest.

SEC. 4729. The judgment must be entered substantially in the form required by this Code. When the judgment is rendered in a case where the defendant is subject to arrest and imprisonment thereon, the fact that the defendant is so subject must be stated in the judgment.

If the sum found due exceeds the jurisdiction the excess may be remitted.

SEC. 4730. When the amount found due to either party exceeds the sum for which the court is authorized to enter judgment, such party may remit the excess, and judgment may be rendered for the residue.

Offer to compromise before trial.

SEC. 4731. If the defendant, at any time before the trial, offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but if he do not accept such offer before the trial, and fail to recover in the action a sum in excess of the offer, he cannot recover costs; but costs must be adjudged against him, and if he recover, be deducted from his recovery. The offer and failure to accept cannot be given in evidence, nor affect the recovery otherwise than as to costs.

Costs must be included in the judgment.

SEC. 4732. The court must tax and include in the judgment the costs allowed by law to the prevailing party.

Abstract of judgment.

SEC. 4733. The Probate Court or Justice of the Peace, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in the following form (filling blanks according to the facts):

Territory of Idaho, County of———, ——————— plaintiff, vs. —————, defendant, ——————— In Probate Court of———County, (or, In Justice Court, before———, Justice of the Peace, of ——— Precinct, or City,)—————, 18——,——(insert date of abstract). Judgment entered for plaintiff (or defendant) for——dollars, on the————day of————, 188—.

I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court, or (as the case may be) in the Court of——, Justice of the Peace, as appears by his docket, now in my possession, as his successor in office, signed by the Clerk of the Probate Court and attested by its seal, or signed by the Justice, as the case may be.

Abstract may be filed and docketed in clerk's office.

SEC. 4734. The abstract may be filed and docketed in the office of the District Clerk of the county in which the judgment was rendered, and must be docketed in the judgment docket of the District Court. The time of the receipt of the abstract by the Clerk must be noted by him thereon, and entered in the docket.

Effect of docketing.

SEC. 4735. From the time of docketing in the District Clerk's office, execution may be issued thereon by the District Clerk to the Sheriff of any county in the Territory, in the same manner and with like effect as if issued on judgments of the District Courts.

Judgment not a lien unless abstract is docketed, amended.

SEC. 4736. A judgment rendered in a Probate or Justice's Court creates no lien upon any lands of the defendant, unless such an abstract is filed and docketed in the office of the Clerk of the District Court of the county in which the lands are situated. When so filed and docketed, such judgment is a lien upon the lands of the judgment debtor situated in that county not exempt from execution owned by him at the time, or which he may afterwards, and before the lien expires acquire. The lien continues for two years, unless the judgment be previously satisfied.

CHAPTER IX.

EXECUTIONS FROM PROBATE AND JUSTICES' COURTS.

SECTION
4741. Execution may issue at any time within five years.
4742. Execution, contents of.
4743. Renewal of execution.
SECTION
4744. Duty of officer receiving execution.
4745. Proceedings supplementary to execution.

Execution may issue at any time within five years.

SECTION 4741. Execution for the enforcement of a judgment may be issued by the Clerk of the Probate Court under the seal of the court, or by the Justice who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment.

Execution, contents of.

SEC. 4742. The execution must be directed to the Sheriff or to a Constable of the county, and must be subscribed by the Clerk or Justice and bear date the day of its delivery to the officer. It must intelligibly refer to the judgment, by stating the names of the parties and the name of the court or Justice before whom, and of the county where, and the time when it was rendered; the amount of judgment if it be for money; and if less than the whole is due, the true amount due thereon. It must contain in like cases, similar directions to the Sheriff or Constable as are required in executions issued from the District Court.

Renewal of execution.

SEC. 4743. An execution may, at the request of the judgment creditor be renewed before the expiration of the time fixed for its return, by the word "renewal" written thereon, with the date thereof, and subscribed by the Clerk or Justice. Such renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

Duty of officer receiving execution.

SEC. 4744. The Sheriff or Constable to whom the execution is directed must execute the same in the same manner as the Sheriff is required to proceed upon executions directed to him, and the Constable, when the execution is directed to him, is vested for that purpose with all the powers of the Sheriff.

Certain provisions made applicable.

SEC. 4745. The provisions of this Code as to proceedings supplementary to execution in the District Court are applicable to Probate and Justices' Courts, the necessary changes and substitutions being made therein.

CHAPTER X.

CONTEMPTS IN JUSTICES' COURTS.

SECTION
4750. Contempts.
4751. Proceedings for contempts.
4752. Same.
SECTION
4753. Punishments for contempts.
4754. The conviction must be entered in the docket.

Contempts, may punish for.

SECTION 4750. A Probate Judge or Justice may punish as for contempt, persons guilty of the following acts, and no other:

1. Disorderly, contemptuous or insolent behavior towards the Judge or Justice while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;
2. A breach of the peace, boisterous conduct or violent disturbance in the presence of the Judge or Justice, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding;
3. Disobedience or resistance to the execution of a lawful order or process, made or issued by him;
4. Disobedience to a subpœna duly served, or refusing to be sworn or to answer as a witness;
5. Rescuing any person or property in the custody of an officer by virtue of an order or process of the court held by him.

Proceedings for contempt

SEC. 4751. When a contempt is committed in the immediate view and presence of the Judge or Justice, it may be punished summarily; to that end an order must be made reciting the facts as they occurred, and adjudging that the person proceeding against is thereby guilty of contempt, and that he be punished as therein prescribed.

Proceedings for contempt.

SEC. 4752. When the contempt is not committed in the immediate view and presence of the Judge or Justice, a warrant of arrest may be issued by such Judge or Justice, on which the person so guilty may be arrested and brought before the Judge or Justice immediately, when an opportunity to be heard in his defense or excuse must be given. The Judge or Justice may thereupon discharge him, or may convict him of the offense.

Punishments for contempts.

SEC. 4753. The Judge or Justice may punish for contempts by fine or imprisonment, or both, such fine not to exceed, in any case, one hundred dollars, and such imprisonment one day.

The conviction must be entered in the docket.

SEC. 4754. The conviction specifying particularly the offense and the judgment thereon, must be entered in the docket.

CHAPTER XI.

DOCKETS OF PROBATE COURT AND JUSTICES OF THE PEACE.

SECTION
4759. Docket, what to contain.
4760. Entries therein primary evidence of the fact.
4761. An index to the docket must be kept.
4762. Dockets must be delivered by Judge or Justice to his successor.
4763. Proceedings when office becomes vacant and before a successor is appointed.

SECTION
4764. May issue execution or other process upon the docket of his predecessor
4765. Successor of a Justice, who shall be deemed.
4766. If two Justices might be deemed successors, the Probate Judge shall designate one.

Docket what to contain.

SECTION 4759. Every Probate Court and Justice must keep a book denominated a "Docket", in which must be entered:

1. The title of every action or proceeding;
2. The object of the action or proceeding; and if a sum of money be claimed, the amount thereof;
3. The date of the summons and the time of its return; and if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of the fact;
4. The time when the parties, or either of them appear, or their non-appearance, if default be made; a minute of the pleadings and motions; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleading;
5. Every adjournment, stating on whose application and to what time;
6. The demand for a trial by jury, when the same is made, and by whom made, the order for the jury, and the time appointed for the return of the jury and for the trial;
7. The names of the jurors who appear and are sworn, and the names of all witnesses sworn, and at whose request;
8. The verdict of the jury, and when received; if the jury disagree and are discharged, the fact of such disagreement and discharge;
9. The judgment of the court specifying the costs included and the time when rendered;
10. The issuing of the execution, when issued, and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the court, when and by whom;
11. The receipt of a notice of appeal, if any be given, and of the appeal bond, if any be filed.

Entries therein primary evidence of the fact.

SEC. 4760. The several particulars of the last section specified must be entered under the title of the section to which they relate, and (unless otherwise in this Code provided), at the time when they occur. Such entries in a Probate or Justice's docket, or a transcript thereof, certified by the Clerk or Justice, or his successor in office, are primary evidence of the facts so stated.

An index to the docket must be kept.

SEC. 4761. The Clerk of the Probate Court and every Justice of the Peace must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs must be entered in the index, in the alphabetical order of the first letter of the family name.

Dockets must be delivered to successor.

SEC. 4762. Every Probate Judge and every Justice of the Peace, upon the expiration of his term of office, must deposit with his successor his official dockets and all papers filed in his office, as well his own as those of his predecessors, or any other which may be in his custody to be kept as public records.

Proceedings when office becomes vacant and before a successor is appointed.

SEC. 4763. If the office of Justice becomes vacant by his death or removal from the precinct or city or otherwise, before his successor is elected and qualified, the docket and papers in possession of such Justice must be deposited in the office of some other Justice in the precinct, to be by him delivered to the successor of such justice. If there is no other Justice in the precinct, then the docket and papers of such Justice must be deposited in the office of the County Recorder of the county, to be by him delivered to the successor in office of the Justice.

May issue execution or other process upon the docket of his predecessor.

SEC. 4764. Any Probate Judge having the docket of his predecessor, and any Justice with whom the docket of his predecessor, or of any other Justice, is deposited, has and may exercise over all actions and proceedings entered in such docket, the same jurisdiction as if originally commenced before him. In case of the creation of a new county, or the change of the boundary between two counties, any Justice into whose hands the docket of a Justice formerly acting as such within the same Territory may come, is, for the purposes of this section, considered the successor of such former Justice.

Successor of a justice, who shall be deemed.

SEC. 4765. The Justice elected to fill a vacancy is the successor of the Justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same precinct or city, from that time is the successor.

If two justices might be deemed successors.

SEC. 4766. When two or more Justices are equally entitled, under the last section, to be deemed the successors in office of the Justice, the Probate Judge, must by a certificate subscribed by him and filed in the office of the County Recorder, designate which Justice is the successor of a Justice going out of office, or whose office has become vacant.

CHAPTER XII.

GENERAL PROVISIONS RELATING TO PROBATE AND JUSTICES' COURTS.

SECTION
4771. Probate Judge or Justices may issue subpœnas and final process to any part of the county.
4772. Blanks must be filled in all papers issued by a Probate Judge or Justice, except subpœnas.
4773. Judge or Justice to receive all moneys collected and pay same to parties.
SECTION
4774. In case of disability of Justice, another Justice may attend on his behalf.
4775. May require security for costs.
4776. Who entitled to costs.
4777. What provisions of Code applicable.
4778. Deposit.

Subpœnas and final process issued to any part of county.

SECTION 4771. Subpœnas out of any Probate or Justice's Court, and final process on any judgment recovered therein, may be issued to any part of the county.

Blanks must be filled in all papers except subpœnas.

SEC. 4772. The summons, execution, and every other paper made or issued by a Probate Court or Justice, except a subpœna, must be issued without a blank left to be filled by another, otherwise it is void.

Judge or justice to receive all moneys collected, and pay same to parties.

SEC. 4773. Probate Judges and Justices of the Peace must receive from the Sheriffs or Constables of their county, all moneys collected on any process or order issued from their courts respectively, and all moneys paid to them in their official capacity, and must pay the same over to the parties entitled or authorized to receive them, without delay.

In case of disability of justice, another justice may attend in his behalf.

SEC. 4774. In case of the sickness or other disability, or necessary absence of a Justice, on a return of a summons or at the time appointed for a trial, another Justice of the same precinct or city may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the Justice before whom the summons was returnable. In that case, the proper entry of proceedings before the attending Justice subscribed by him, must be made in the docket of the Justice before whom the summons was returnable. If the case is adjourned, the Justice before whom the summons was returnable may resume jurisdiction.

Security for costs.

SEC. 4775. Probate and Justices' Courts may in all cases require a deposit of money or an undertaking, as security for costs of court, before issuing a summons.

Costs.

SEC. 4776. The prevailing party in Probate and Justices' Courts is entitled to costs of the action and also of any proceedings taken by him in aid of an execution, issued upon any judgment recovered therein.

Provisions of code applicable.

SEC. 4777. The Probate Courts in the exercise of their civil jurisdiction, and Justices' Courts, being courts of peculiar and limited jurisdiction, only those provisions of this Code which are, in their nature, applicable to the organization, powers, and course of proceedings in these courts, or which have been made applicable by special provisions in this Code, are applicable to these courts and the proceedings therein.

Deposit in lieu of undertaking.

SEC. 4778. In all civil cases arising in Probate and Justices' Courts, where an undertaking is required by this Code, a deposit with the court of a sum of money equal to the amount of the required undertaking, may be received and held by the court in place of said undertaking.

TITLE XIII.

OF APPEALS IN CIVIL ACTIONS.

CHAPTER I.

APPEALS IN GENERAL.

SECTION
4800. Judgment and orders may be reviewed.
4801. Orders made out of court, without notice, may be reviewed by the Judge.
SECTION
4802. Party aggrieved may appeal. Names of parties.

Judgment and orders may be reviewed.

SECTION 4800. A judgment or order, in a civil action, except when expressly made final, may be reviewed as prescribed in this Code, and not otherwise.

Orders made out of court, and without notice, may be reviewed by the judge.

SEC. 4801. An order made out of court, without notice to the adverse party, may be vacated or modified without notice, by the Judge who made it; or may be vacated or modified on notice in the manner in which other motions are made.

Party aggrieved may appeal, names of parties.

SEC. 4802. Any party aggrieved may appeal in the cases prescribed in this Code. The party appealing is known as the appellant, and the adverse party as the respondent.

CHAPTER II.

APPEALS TO SUPREME COURT FROM DISTRICT COURT.

SECTION
4807. Within what time appeal may be taken.
4808. Appeal, how taken.
4809. Undertaking or deposit on appeal.
4810. Undertaking on appeal from a money judgment.
4811 Appeal from a judgment for a delivery of documents.
4812. Appeal from a judgment directing the execution of a conveyance, etc.
4813. Undertaking on appeal concerning real property.
4814. Stay of proceedings. The security on appeal may be limited in the case of an executor, etc.
4815. Undertaking may be in one instrument or several
4816. Justification of sureties on undertaking on appeal.
4817. Undertakings in cases not specified.
SECTION
4818. What papers to be used on an appeal from the judgment.
4819. What papers used on appeals from orders, or from judgments rendered on appeal.
4820. What papers to be used on an appeal from an order granting or refusing a new trial.
4821. Copies and undertakings, how certified.
4822. When an appeal may be dismissed.
4823. Effect of dismissal.
4824. What may be reviewed on an appeal from judgment.
4825. Remedial powers of an Appellate Court.
4826. On judgment on appeal, remittitur must be certified to the Clerk of the Court below.

Within what time an appeal may be taken.

SECTION 4807. An appeal may be taken to the Supreme Court from a District Court:

1. From a final judgment in an action or special proceeding commenced in the court in which the same is rendered, within one year after the entry of judgment. But an exception to the decision or verdict, on the ground that it is not supported by the evidence, cannot be reviewed on an appeal from the judgment, unless the appeal is taken within sixty days after the rendition of the judgment;

2. From a judgment rendered on an appeal from an inferior court, within ninety days after the entry of such judgment;

3. From an order granting or refusing a new trial; from an order granting or dissolving an injunction; from an

order refusing to grant or dissolve an injunction; from an order dissolving or refusing to dissolve an attachment; from an order granting or refusing to grant a change of the place of trial; from any special order made after final judgment, and from an interlocutory judgment in actions for partition of real property, within sixty days after the order or interlocutory judgment is made and entered on the minutes of the court or filed with the Clerk.

Appeal, how taken.

SEC. 4808. An appeal is taken by filing with the Clerk of the Court in which the judgment or order appealed from is entered, a notice stating the appeal from the same, or some specific part thereof, and serving a similar notice on the adverse party, or his attorney. The order of service is immaterial, but the appeal is ineffectual for any purpose, unless within five days after service of the notice of appeal, an undertaking be filed, or a deposit of money be made with the Clerk, as hereinafter provided, or the undertaking be waived by the adverse party in writing.

Undertaking or deposit on appeal, amended.

SEC. 4809. The undertaking on appeal must be in writing, and must be executed on the part of the appellant by at least two sureties, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding three hundred dollars; or that sum must be deposited with the Clerk with whom the judgment or order was entered, to abide the event of the appeal; *Provided,* That when more than one appeal in the same action, whether from the judgment and an appealable order or orders, or from two or more appealable orders, are taken at the same time, but one such undertaking or deposit for damages and costs need be filed or made.

Undertaking on appeal from a money judgment.

SEC. 4810. If the appeal be from a judgment or order directing the payment of money, it does not stay the execution of the judgment or order, unless a written undertaking be executed on the part of the appellant by two or more sureties to the effect that they are bound in double the amount named in the judgment or order; that if the judgment or order appealed from, or any part thereof be affirmed or the appeal be dismissed, the appellant will pay the amount directed to be paid by the judgment or order, or the part of such amount as to which the judgment or order is affirmed, if affirmed only in part, and all damages and costs which may be awarded against the appellant upon the appeal, and that if the appellant does not make such payment within thirty days after the filing of the remittitur from the Supreme Court in the court from which the appeal is taken, judgment may be entered on motion of the respondent, in his favor against the sureties, for such amount together with the interest that may be due thereon, and the damages and costs which may be awarded against the appellant upon the appeal. If the judgment or order appealed from, be for a greater amount than two thousand dollars, and the sureties do not state in their affidavits of justification accompanying the undertaking, that they are each worth the sum specified in the undertaking, the stipulation may be that the judgment to be entered against the sureties shall be for such amounts only as in their affidavits, they may state they are severally worth, and judgment may be entered against the sureties by the court from which the appeal is taken pursuant to the stipulations herein designated. When the judgment or order appealed from, is made payable in a specified kind of money or currency, the judgment entered against the sureties upon the undertaking, must be made payable in the same kind of money or currency.

Appeal from a judgment for delivery of documents.

SEC. 4811. If the judgment or order appealed from direct the assignment or delivery of documents or personal property, the execution of the judgment or order cannot be stayed by appeal, unless the things required to be assigned or delivered be placed in the custody of such officer or receiver as the court or Judge thereof may appoint; or unless an undertaking be entered into on the part of the appellant, with at least two sureties, and in such amount as the court, or Judge thereof, may direct, to the effect that the appellant will obey the order of the Appellate Court upon the appeal.

Appeal from a judgment directing the execution of a conveyance, etc.

SEC. 4812. If the judgment or order appealed from, direct the execution of a conveyance or other instrument, the execution of the judgment or order cannot be stayed by the appeal until the instrument is executed and deposited with the Clerk with whom the judgment or order is entered, to abide the judgment of the Appellate Court.

Undertaking on appeal concerning real property.

SEC. 4813. If the judgment or order appealed from, direct the sale or delivery of possession of real property the execution of the same cannot be stayed, unless a written undertaking be executed on the part of the appellant with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment be affirmed, or the appeal dismissed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, pursuant to the judgment or order, not exceeding a sum to be fixed by the Judge of the court by which the judgment was rendered or order made, and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of such deficiency.

Stay of proceedings.

SEC. 4814. Whenever an appeal is perfected, as provided in the preceding sections of this chapter, it stays all further proceedings in the court below, upon the judgment or order appealed from, or upon the matters embraced therein, and releases from levy property which has been levied upon under execution issued upon such judgment; but the court below may proceed upon any other matter embraced in the action, and not affected by the order appealed from. And the court below may, in its discretion, dispense with or limit the security required by this chapter, when the appellant is an executor, administrator, trustee, or other person acting in another's right.

The security on appeal may be limited when appellant is executor, etc.

An appeal does not continue in force and attachment, unless an undertaking be executed and filed on the part of the appellant, by at least two sureties, in double the amount of the debt claimed by him; that the appellant will pay all costs and damages which the respondent may sustain by reason of the attachment, in case the order of the court below be sustained; and unless, within twenty days after the entry of the order appealed from, such appeal be perfected.

Undertaking may be in one instrument or several.

SEC. 4815. The undertakings prescribed by sections 4809, 4810, 4811 and 4813, may be in one instrument or several, at the option of the appellant.

Justification of sureties on undertaking on appeal.

SEC. 4816. The adverse party may except to the sufficiency of the sureties to the undertakings mentioned in sections 4809, 4810, 4811 and 4813, at any time within thirty days after the filing of such undertaking; and, unless they or other sureties, within twenty days after the appellant has been served with notice of such exception, justify before a Judge of the court below, or the Probate Judge of the county, upon five days' notice to the respondent, of the time and place of justification, execution of the judgment, order, or decree appealed from is no longer stayed; and in all cases where an undertaking is required on appeal by the provisions of this Title, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars, in addition, is equivalent to filing the undertaking; and in all cases the undertaking or deposit may be waived by the written consent of the respondent.

Undertakings in cases not specified.

SEC. 4817. In cases not provided for in sections 4810, 4811, 4812 and 4813, the perfecting of an appeal by giving the undertaking, or making the deposit mentioned in section 4809, stays proceedings in the court below, upon the judgment or the order appealed from, except where it directs the sale of perishable property; in which case the court below may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the appellate court. And except, also, where it adjudges the defendant guilty of usurping or intruding into, or unlawfully holding a public office, civil or military, within this Territory. And except, also, where the order grants, or refuses to grant, a change of the place of trial of an action.

What papers to be used on an appeal from the judgment.

SEC. 4818. In an appeal from a final judgment, the appellant must furnish the court with a copy of the notice of appeal, of the judgment roll, and of any bill of exceptions or statement in the case, upon which the appellant relies. Any statement used on motion for a new trial, or settled after decision of such motion, when the motion is made upon the minutes of the court, as provided in section 4443, or any bill of exceptions settled, as provided in sections 4429 or 4430, or used on motion for a new trial, may be used on appeal from a final judgment equally as upon appeal from the order granting or refusing the new trial.

Papers used on appeal from judgment on appeal, or order.

SEC. 4819. On appeal from a judgment rendered on an appeal, or from an order, except an order granting or refusing a new trial, the appellant must furnish the court with a copy of the notice of appeal, of the judgment or order appealed from, and of papers used on the hearing in the court below.

What papers used on appeal from order granting or refusing new trial.

SEC. 4820. On an appeal from an order granting or refusing a new trial, the appellant must furnish the court with a copy of the notice of appeal, of the order appealed from, and of the papers designated in section 4443 of this Code.

Copies and undertakings, how certified.

SEC. 4821. The copies provided for in the last three sections must be certified to be correct by the Clerk or the attorneys, and must be accompanied with a certificate of the Clerk or attorneys, that an undertaking on appeal, in due form, has been properly filed or a stipulation of the parties waiving an undertaking.

When an appeal may be dismissed.

SEC. 4822. If the appellant fails to furnish the requisite papers, the appeal may be dismissed; but no appeal can be dismissed for insufficiency of the undertaking thereon if a good and sufficient undertaking approved by a Justice of the Supreme Court, be filed in the Supreme Court before the hearing upon motion to dismiss the appeal.

Effect of dismissal.

SEC. 4823. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

What may be reviewed on an appeal from judgment.

SEC. 4824. Upon an appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision, if excepted to, which involves the merits or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

Remedial powers of appellate court.

SEC. 4825. When the judgment or order reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment or order, so for as the restitution is consistent with the protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment on the appeal from which the proceedings were not stayed; and for relief in such cases, the appellant may have his action against the respondent enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale. When it appears to the Appellate Court that the appeal was made for delay, it may add to the cost such damages as may be just.

On judgment on appeal remittitur must be certified to the clerk of the court below.

SEC. 4826. When the judgment is rendered upon the appeal, it must be certified by the Clerk of the Supreme Court to the Clerk with whom the judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the Clerk with whom the roll is filed must attach the certificate to the judgment roll, and enter a minute of the judgment of the Supreme Court on the docket, against the original entry. In cases of appeal from an order, the Clerk must enter at length in the records of the court the certificate received, and minute against the entry of the order appealed from, a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the Supreme Court on appeal.

CHAPTER III.

APPEALS FROM PROBATE COURTS TO DISTRICT COURT IN PROBATE MATTERS.

SECTION
4831. When may be taken.
4832. Executors and administrators not required to give undertaking on appeal.
SECTION
4833. Acts of acting administrator, etc., not invalidated by reversal of order appointing him.

When may be taken.

SECTION 4831. An appeal may be taken to the District Court of the county from a judgment or order of the Probate Court in probate matters:

1. Granting, refusing or revoking letters testamentary, or of administration, or of guardianship;

2. Admitting, or refusing to admit, a will to probate;

3. Against or in favor of the validity of a will, or revoking the probate thereof;

4. Against or in favor of setting apart property, or making an allowance for a widow or child;

5. Against or in favor of directing the partition, sale, or conveyance of real property;

6. Settling an account of an executor, or administrator, or guardian;

7. Refusing, allowing, or directing the distribution or partition of an estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share;

8. Confirming report of appraiser setting apart the homestead.

Executors and administrators not required to give undertaking on appeal.

SEC. 4832. When an executor, administrator or guardian who has given an official bond, appeals from a judgment or order of the Probate Court made in the proceedings had upon the estate of which he is administrator, executor, or guardian, his official bond stands in the place of an undertaking on appeal, and the sureties therein are liable as on such undertaking.

Acts of acting executor, etc., not invalidated by reversal of order appointing him.

SEC. 4833. When the order or decree appointing an executor, administrator, or guardian, is reversed on appeal for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor, administrator, or guardian, if he have qualified, are as valid as if such order or decree had been affirmed.

CHAPTER IV.

APPEALS FROM PROBATE AND JUSTICES' COURTS TO DISTRICT COURTS.

SECTION
4838. Appeal from judgment.
4839. Party appealing on question of law alone must prepare a statement. Settlement of statement.
4840. If the appeal be upon questions of fact or of law and fact, no statement need be made.
SECTION
4841. Upon the appeal, must transmit the case.
4842. Undertaking on appeal. Justification of sureties.
4843. On filing undertaking, execution must be stayed.
4844. Miscellaneous provisions on trials.

Appeal from judgment.

SECTION 4838. Any party dissatisfied with a judgment rendered in a civil action in a Probate or Justice's court, may appeal therefrom to the District Court of the county, at any time within thirty days after the rendition of the judgment. The appeal is taken by filing a notice of appeal with the Justice or Judge, and serving a copy on the adverse party. The notice must state whether the appeal is taken from the whole or a part of the judgment, and if from part, what part, and whether the appeal is taken on questions of law or fact, or both.

Party appearing on question of law alone must prepare a statement.

SEC. 4839. When a party appeals to the District Court on questions of law alone, unless the question arises upon the pleadings or files in the action, or appears from the docket of the court, he must, within ten days from the rendition of judgment, prepare a statement of the case, and file the same with the Justice or Judge. The statement must contain the grounds upon which the party intends to rely on the appeal, and so much of the evidence as may be necessary to explain the grounds and no more. Within ten days after

Amended.

he receives notice that the statement is filed, the adverse party if dissatisfied with the same, may file amendments. The proposed statement and amendments must be settled by the Justice or Judge, and if no amendment be filed, the original statement stands as adopted. The statement thus adopted, or as settled by the Justice or Judge, with a copy of the docket of the Justice or Judge, and all motions filed with him by the parties during the trial, and the notice of appeal, may be used on the hearing of the appeal before the District Court.

Settlement of statement.

Appeal upon questions of fact, or of law and fact.

SEC. 4840. When a party appeals to the District Court on questions of fact, or on questions of both law and fact, no statement need be made, but the action be tried anew in the District Court.

Upon the appeal must transmit the case.

SEC. 4841. Upon receiving the notice of appeal, and on payment of the fees of the court or Justice and filing an undertaking as required in the next section, and after settlement or adoption of statement, if any, the Clerk or Justice must, within five days, transmit to the Clerk of the District Court, if the appeal be on questions of law alone, the pleadings and files in the action, a certified copy of his docket, the statement, if any, as admitted or as settled, the notice of appeal and the undertaking filed; or, if the appeal be on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and other papers filed in the cause, the notice of appeal and the undertaking filed; and the Justice or Judge may be compelled by the district court, by an order entered upon motion, to transmit such papers, and may be fined for neglect or refusal to transmit the same. A certified copy of such order may be served on the Justice or Judge by the party or his attorney. In the District Court, either party may have the benefit of all legal objections made in Probate or Justices' Courts. And the District Court has the same power to grant relief by amendment and otherwise, as in actions commenced in the District Court.

Undertaking an appeal.

SEC. 4842. An appeal from a Justice's or Probate Court is not effectual for any purpose, unless an undertaking be filed, with two or more sureties, in the sum of one hundred dollars, for the payment of the costs on the appeal; or, if a stay of proceedings be claimed, in a sum equal to twice the amount of the judgment, including costs, when the judgment if for the payment of money; or twice the value of the property, including costs, when the judgment if for the recovery of specific personal property, and must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs, if the appeal be withdrawn or dismissed, or the amount of any judgment, and all costs that may be recovered against him in the action in the District Court. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal be withdrawn or dismissed, or any judgment and costs that may be recovered against him in said action in the District Court, and will obey any order made by the court therein. When the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed, any waste thereon, and that if the appeal be dismissed or withdrawn, or the judgment affirmed, or judgment be recovered against him in the action in the District Court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof; or that he will pay any judgment and costs that may be recovered against him in said action in the District Court, not exceeding the sum to be fixed by the Judge or Justice of the court from which the appeal is taken, and which sum must be specified in the undertaking. A deposit of the amount of the judgment, including all costs appealed from, or of the value of the property including all costs in actions for the recovery of specific personal property, with the Justice or Judge, is equivalent to the filing of the undertaking; and in such cases the Justice or Judge must transmit the money to the Clerk of the District Court, to be by him paid out on the order of the court. The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the Justice or Judge from whom the appeal is taken, within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given.

Justification of sureties.

SEC. 4843. If an execution be issued, on the filing of the undertaking staying proceedings, the Justice or Judge must, by order, direct the officer to stay all proceedings on the same. Such officer must, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees be not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

On filing undertaking, execution must be stayed.

SEC. 4844. Upon an appeal on questions of law alone, the District Court may review all orders affecting the judgment appealed from, and may set aside, or confirm, or modify any or all of the proceedings subsequent to and dependent upon such judgment, and may, if necessary or proper, order a new trial in the District Court. When the action is tried anew on appeal, the trial must be conducted in all respects as trials in the District Court. The provisions of this Code as to changing the place of trial, and all the provisions as to trial in the District Court, are applicable to trials on appeal in the District Court. For a failure to prosecute on appeal, or unnecessary delay in bringing it to a hearing, the District Court, after notice, may order the appeal to be dismissed with costs; and if it appear to such court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding twenty-five per cent of the judgment appealed from. Judgments rendered in the District Court on appeal have the same force and effect, and may be enforced in the same manner as judgments in actions commenced in the District Court.

Miscellaneous provisions on trials.

TITLE XIV.

OF MISCELLANEOUS PROVISIONS.

CHAPTER I.

PROCEEDINGS AGAINST JOINT DEBTORS.

SECTION
4860. Parties not summoned in action on joint contract, may be summoned after judgment.
4861. Summons in that case, what to contain and how served.
4862. Affidavit to accompany summons.
SECTION
4863. Answer, when filed and what it may contain.
4864. What constitute the pleadings in the case.
4865. Issues, how tried. Verdict, what to be.

Parties not summoned in action on joint contract may be summoned after udgment.

SECTION 4860. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in section 4147, those who were not originally served with the summons, and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as thought they had been originally served with the summons.

Summons in that case, what to contain and how served.

SEC. 4861. The summons, as provided in the last section, must describe the judgment, and require the person summoned to show cause why he should not be bound by it, and must be served in the same manner, and returnable within the same time as the original summons. It is not necessary to file a new complaint.

Affidavit to accompany summons.

SEC. 4862. The summons must be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon.

Answer, when filed and what it may contain

SEC. 4863. Upon such summons the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently, except a discharge from liability by the statute of limitations; or he may deny his liability on the obligation upon which the judgment was recovered.

What constitute the pleadings in the case.

SEC. 4864. If the defendant in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons with the affidavits annexed, and the answer constitute the written allegations in the case; if he deny his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer, constitute such written allegations.

Issues, how ried

Verdict, what to be.

SEC. 4865. The issues formed may be tried as in other cases; but when the defendant denies in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it must be for not exceeding the amount remaining unsatisfied on such original judgment, with interest thereon.

CHAPTER II.

OFFER OF THE DEFENDANT TO COMPROMISE.

SECTION
4870. Proceedings on offer of the defendant to compromise.

SECTION 4870. The defendant in any action may, at any time before the trial or judgment, serve upon the plaintiff an offer to allow judgment to be taken against him for the sum or property, or to the effect therein specified. If the plaintiff accept the offer, and give notice thereof within five days, he may file the offer, with proof of notice of acceptance, and the clerk must thereupon enter judgment accordingly. If the notice of acceptance be not given, the offer is to be deemed withdrawn, and cannot be given in evidence upon the trial; and if the plaintiff fail to obtain a more favorable judgment, he cannot recover costs accruing subsequently to the offer, but must pay the defendant's costs from the time of the offer.

Proceedings on offer of defendant to compromise after suit brought.

CHAPTER III.

INSPECTION OF WRITINGS.

SECTION
4875. A party may demand inspection and copy of a writing.

SECTION 4875. Any court in which an action is pending, or a Judge thereof, may, upon notice, order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of entries of account in any book, or of any document, or paper in his possession, or under his control, containing evidence relating to the merits of the action, or the defense therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence; or, if wanted as evidence by the party applying, may direct the jury to presume them to be such as he alleges them to be; and the court may also punish the party refusing, for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, papers, or documents when he is examined as a witness.

A party may demand inspection and copy of a book, paper, etc.

CHAPTER IV.

MOTIONS AND ORDERS.

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4880. Order and motion defined.
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4882. Notice of motion, at what time to be given.

SECTION
4883. Transfer of motions and orders to show cause.
4884. Order for payment of money, how enforced.

SECTION 4880. Every direction of a court or Judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Order and motion defined.

SEC. 4881. Motions must be made in the county in which the action is pending, or in any county in the same judicial district. Orders made out of court may be made by the Judge of the court in any part of the Territory.

Motions and orders, where made.

Notice of motion, at what time to be given.

SEC. 4882. When a written notice of a motion is required by this Code, it must be given, unless a different time is prescribed, if the hearing is had in the same district in which the action is pending or the proceeding had, five days before the time appointed for the hearing; otherwise, ten days. When the notice is served by mail, the number of days before the hearing must be increased one day for every twenty-five miles of distance between the place of deposit and the place of service; such increase, however, not to exceed in all thirty days; but the court or Judge may prescribe a shorter time. Copies of all the moving papers, except records of the court and files in the action, must be served with the notice, or with an order to show cause. But no written notice of any motion affecting the pleadings or for judgment, or of any motion made during the progress of the trial shall be required.

Transfer of motions and orders to show cause.

SEC. 4883. When a notice of motion is given, or an order to show cause is made returnable before a Judge out of court, and at the time fixed for the motion, or on the return day of the order, the Judge is unable the hear the parties, the matter may be continued or transferred by his order to some other Judge.

Order for payment of money, how enforced, when and how served.

SEC. 4884. Whenever an order for the payment of a sum of money is made by a court or Judge pursuant to the provisions of this Code, it may be enforced by execution in the same manner as if it were a judgment.

CHAPTER V.

SERVICE OF PAPERS, NOTICE AND APPEARANCE.

4889. Notices of papers, when and how served.
4890. Service by mail, when.
4891. Service by mail, how.
4892. Appearance. Notices after appearance.
SECTION
4893. Service on non-residents. Where a party has an attorney, service shall be on such attorney.
4894. Preceding provisions not to apply to proceeding to bring party into contempt.
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When and how served.

SECTION 4889. The service of notice or other paper may be personal, by delivery to the party or attorney on whom the service is required to be made, or it may be as follows:

1. If upon an attorney, it may be made during his absence from his office, by leaving the notice or other papers with his clerk therein, or with a person having charge thereof; or when there is no person in the office by leaving them, between the hours of eight in the morning and six in the afternoon, in a conspicuous place in the office; or if it be not open so as to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion; and if his residence be not known, then by putting the same, enclosed in an envelope, into the postoffice, directed to such attorney;

2. If upon a party, it may be made by leaving the notice or other paper at his residence, between the hours of eight in the morning, and six in the evening, with some person of suitable age and discretion; and if his residence be not known, by putting the same, enclosed in an envelope into the postoffice, directed to such party.

Service by mail, when.

SEC. 4890. Service by mail may be made, where the person making the service, and the person on whom it is to be made, reside or have their offices in different places, between which there is a regular communication by mail.

Service by mail, how.

SEC. 4891. In case of service by mail the notice or other paper must be deposited in the postoffice, addressed to the person on whom it is to be served, at his office or place of residence, and the postage paid. The service is complete at the time of the deposit, but if within a given number of days after such service a right may be exercised or an act is to be done by the adverse party, the time within which such right may be exercised or act be done, is extended one day for every twenty-five miles distance between the place of deposit and the place of address; such extension, however, not to exceed thirty days in all.

Appearance.

SEC. 4892. A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him. After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given. But where a defendant has not appeared, service of notice or papers need not be made upon him unless he is imprisoned in the action for want of bail.

Notices after appearance.

Service on nonresidence.

SEC. 4893. When a plaintiff or a defendant, who has appeared, resides out of the Territory, and has no attorney resident of the Territory in the action or proceeding, the service may be made on the Clerk for him. But in all cases where a party has such resident attorney in the action or proceeding, the service of papers, when required, must be upon the attorney instead of the party, except of subpœnas, of writs, and other process issued in the suit, and of papers to bring into contempt. If there be no such resident attorney of record, service may be made upon the party.

When a party has an attorney, service shall be on such attorney.

Proceeding provisions not to apply to proceeding to bring party into contempt.

SEC. 4894. The foregoing provisions of this chapter do not apply to the service of a summons or other process, or of any paper to bring a party into contempt.

Service by telegraph.

SEC. 4895. Any summons, writ, or order in any civil suit or proceeding, and all other papers requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy of such writ, or order, or paper so transmitted, may be served or executed by the officer or person to whom it is sent for that purpose, and returned by him, if any return be requisite, in the same manner and with the same force and effect in all respect, as the original thereof might be if delivered to him, and the officer or person serving or executing the same, has the same authority, and is subject to the same liabilities, as if the copy were the original. The original, when a writ or order, must also be filed in the court from which it was issued, and a certified copy thereof preserved in the telegraph office from which it was sent. In sending it, either the original or the certified copy may be used by the operator for that purpose. Whenever any document to be sent by telegraph bears a seal, either private or official, it is not necessary for the operator, in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L. S." or by the word "seal."

CHAPTER VI.

OF COSTS.

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4917. Costs when Territory is a party.
4918. Costs when county is a party.

Compensation of attorneys costs to parties.

SECTION 4900. The measure and mode of compensation of attorneys and counselors at law is left to the agreement express or implied, of the parties; but parties to actions or proceedings are entitled to costs and disbursements, as hereinafter provided.

When allowed of course to plaintiff.

SEC. 4901. Costs are allowed of course to the plaintiff, upon a judgment in his favor, in the following cases:

1. In an action for the recovery of real property;
2. In an action to recover the possession of personal property where the value of the property amounts to one hundred dollars or over; such value shall be determined by the jury, court, or referee, by whom the action is tried;
3. In an action for the recovery of money or damages, when plaintiff recovers one hundred dollars or over;
4. In a special proceeding;
5. In an action which involves the title or possession of real estate, or the legality of any tax, impost, assessment toll, or municipal fine.

Several actions brought on a single cause of action can carry costs in but one.

SEC. 4902. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendant in the same action, no costs can be allowed to the plaintiff in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions were at the commencement of the previous action openly within this Territory, but the disbursements of the plaintiff must be allowed to him in each action.

Defendant's costs allowed in certain cases.

SEC. 4903. Costs must be allowed, of course, to the defendant upon a judgment in his favor in the actions mentioned in section 4901, and in special proceedings.

Costs, when in the discretion of the court.

SEC. 4904. In other actions than those mentioned in section 4901, costs may be allowed or not, and, if allowed, may be apportioned between the parties, on the same or adverse sides, in the discretion of the court, but no costs can be allowed in an action for the recovery of money or damages, when the plaintiff recovers less than one hundred dollars, nor in an action to recover the possession of personal property when the value of the property is less than one hundred dollars.

When the several defendants are not united in interest, costs may be severed.

SEC. 4905. When there are several defendants in the actions mentioned in section 4901, not united in interest, and making separate defenses by separate answers, and plaintiff fails to recover judgment against all, the court must award costs to such of the defendants as have judgment in their favor.

Costs of appeal discretionary with the court, in certain cases, amended.

SEC. 4906. In the following cases the costs of appeal are in the discretion of the court:

1. When a new trial is ordered;
2. When a judgment is modified. In all other cases the prevailing party shall recover costs, including his costs below when the appeal is to the District Court.

Referee's fees.

SEC. 4907. The fees of referees are five dollars to each for every day spent in the business of the reference; but the parties may agree, in writing, upon any other rate of compensation, and thereupon such rate shall be allowed.

Continuance, costs may be imposed as condition of.

SEC. 4908. When an application is made to a court or referee to postpone a trial, the payment of costs occasioned by the postponement may be imposed, in the discretion of the court or referee, as a condition of granting the same.

Costs when a tender is made before suit brought.

SEC. 4909. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action be tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court, for plaintiff, the amount so tendered, and the allegation be found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant.

Costs in action by or against an administrator, etc.

SEC. 4910. In an action prosecuted or defended by an executor, administrator, trustee of express trust, or a person expressly authorized by statute, costs may be recovered as in action by and against a person prosecuting or defending in his own right; but such costs must, by the judgment, be made chargeable only upon the estate, fund or party represented, unless the court directs the same to be paid by the plaintiff or defendant, personally for mismanagement or bad faith in the action or defense.

Costs on review other than by appeal, amendment.

SEC. 4911. When the decision of a court of inferior jurisdiction in a special proceeding is brought before a court of higher jurisdiction for a review, in any other way than by appeal, the same costs must be allowed as in cases on appeal, and may be collected by execution, or in such manner as the court may direct, according to the nature of the case.

Filing and service, and affidavit of bill of costs.

SEC. 4912. The party in whose favor the judgment is rendered, and who claims his costs, must deliver to the Clerk within five days after the verdict or notice of the decision of the court or referee, a memorandum of the items of his costs and necessary disbursements in the action or proceeding, which memorandum must be verified by the oath of the party or his attorney or agent, or by the clerk of his attorney, stating that to the best of his knowledge and belief, the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed, may, within three days after the filing of the bill of costs, file a motion to have the same taxed by the court in which the judgment was rendered, or by the Judge thereof at chambers.

Costs on appeal, how claimed and recovered.

SEC. 4913. Whenever costs are awarded to a party by an Appellate Court, if he claims such costs, he must within thirty days after the remititur is filed with the Clerk below, deliver to such Clerk a memorandum of his costs, verified as prescribed by the preceding section, and thereafter he may have an execution therefor as upon a judgment.

Interest and costs must be included by the clerk in the judgment.

SEC. 4914. The Clerk must include in the judgment entered up by him, any interest on the verdict or decision of the court, from the time it was rendered or made, and the costs, if the same have been taxed or ascertained; and he must, within two days after the same are taxed or ascertained, if not included in the judgment, insert the same in a blank left in the judgment for that purpose, and must make a similar insertion of the costs in the copies and docket of the judgment.

Security for costs.

SEC. 4915. When the plaintiff in an action resides out of the Territory, or is a foreign corporation, security for the costs and charges, which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the Clerk to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or Judge upon proof that the original undertaking is sufficient security, and proceedings in the action stayed until such new or additional undertaking is excuted and filed.

If such security is not given, the action may be dismissed.

SEC. 4916. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or Judge may order the action to be dismissed.

Costs when Territory is a party.

SEC. 4917. When the Territory is a party and costs are awarded against it, they must be paid out of the Territorial Treasury, and the Territorial Controller shall draw his warrant therefor on the general fund.

Costs when county is a party.

SEC. 4918. When a county is a party and costs are awarded against it, they must be paid out of the county treasury.

CHAPTER VII.

GENERAL PROVISIONS.

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Lost papers, how supplied.

SECTION 4923. If an original pleading or paper be lost, the court may authorize a copy thereof to be filed and used instead of the original.

SEC. 4924. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, is as valid and effectual for any purpose as if duly entitled, if it intelligently refer to such action or proceeding.

Papers without the title of the action, or with defective title, may be valid.

SEC. 4925. Successive actions may be maintained upon the same contract or transaction, whenever, after the former action, a new cause of action arises therefrom.

Successive actions on the same contract, etc.

SEC. 4926. Whenever two or more actions are pending at one time between the same parties and in the same court, upon cause of action which might have been joined, the court may order the actions to be consolidated.

Consolidation of several actions into one.

SEC. 4927. An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

Actions, when deemed pending.

SEC. 4928. An action may be brought by one person against another for the purpose of determining an adverse claim, which the latter makes against the former for money or property upon an alleged obligation; and also against two or more persons, for the purpose of compelling one to satisfy a debt due to the other, for which plaintiff is bound as a surety.

Actions to determine adverse claims and by sureties.

SEC. 4929. On the trial of an action in a court of record, if there is no short-hand reporter of the court in attendance, the court may require the Clerk to take down the testimony in writing.

Testimony, when to be taken by the clerk.

SEC. 4930. The Clerk must keep among the records of the court a register of actions. He must enter therein the title of the action, with brief notes under it, from time to time, of all papers filed and proceedings had therein.

The clerk must keep a register of actions.

SEC. 4931. When there are three referees, or three arbitrators, all must meet, but two of them may do any act which might be done by all.

Two of three referees, etc., may do any act.

SEC. 4932. When an act to be done, as provided in this Code, relates to the pleadings in the action, or the undertakings to be filed, or the justification of sureties, or the preparation of statements, or of bills of exceptions, or of amendments thereto, or to the service of notices, other than of appeal, the time allowed by this Code may be extended, upon good cause shown, by the court in which the action is pending, or the Judge thereof.

Time within which an act under this code to be done, may be extended.

SEC. 4933. If an action is brought against a Sheriff for an act done by virtue of his office, and he gives written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein is conclusive evidence of his right to recover against such sureties; and the court, or Judge in vacation, may, on motion, upon notice of five days, order judgment to be entered up against them for the amount so recovered, including costs.

Actions against a sheriff for official acts.

SEC. 4934. In all cases where an undertaking, with sureties, is required by the provisions of this Code, the officer taking the same, must require the sureties to accompany it with an affidavit that they are each residents and householders or freeholders within the Territory, and each are worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the

Undertakings mentioned in this code, requisites of.

undertaking exceeds two thousand dollars, and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

People not required to give bonds.

SEC. 4935. In any civil action or proceeding wherein the Territory or the people of the Territory is a party plaintiff, or any Territorial officer, in his official capacity, or on behalf of the Territory, or any county, or city, is a party plaintiff or defendant, no bond, written undertaking, or security can be required of the Territory, or the people thereof, or any officer thereof, or of any county, or city; but on complying with the other provisions of this Code, the Territory, or the people thereof, or any Territorial officer acting in his official capacity, or any county or city, have the same rights, remedies, and benefits as if the bond, undertaking, or security were given and approved as required by this Code.

Surety on appeal bond when substituted to rights of judgment creditor.

SEC. 4936. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the Appellate Court, he is substituted to the rights of the judgment creditor, and is entitled to control, enforce, and satisfy such judgments in all respects as if he had recovered the same.

PART III.—OF SPECIAL PROCEEDINGS OF A CIVIL NATURE.

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SECTION
4956. Judgment and order same meaning as in civil actions.

SECTION 4955. The party prosecuting a special proceeding may be known as the plaintiff, and the adverse party as the defendant.

Parties, how designated.

SEC. 4956. A judgment in a special proceeding is the final determination of the rights of the parties therein. The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding.

Judgment and order same, meaning as in civil actions.

TITLE I.

OF WRITS OF REVIEW, MANDATE AND PROHIBITION.

CHAPTER I.

WRIT OF REVIEW.

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SECTION 4961. The writ of certiorari may be denominated the writ of review.

Certiorari defined.

SEC. 4962. A writ of review may be granted by any court except a Probate or Justice's Court, when an inferior tribunal, board or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy and adequate remedy.

When and by what courts granted.

SEC. 4963. The application must be made on affidavit by the party beneficially interested, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Application for, how made.

SEC. 4964. The writ may be directed to the inferior tribunal, board or officer, or to any other person having the custody of the record or proceedings to be certified. When directed to a tribunal, the Clerk, if there be one, must return the writ with the transcript required.

The writ to be directed to the inferior tribunal, etc.

Contents of the writ.

SEC. 4965. The writ of review must command the party to whom it is directed to certify fully to the court issuing the writ, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court and requiring the party in the meantime to desist from further proceedings in the matter to be reviewed.

Proceedings in inferior court may be stayed, or not.

SEC. 4966. If a stay of proceedings be not intended, the words requiring the stay must be omitted from the writ; these words may be inserted or omitted in the sound discretion of the court, but if omitted, the power of the inferior court or officer is not suspended or the proceedings stayed.

Service of the writ.

SEC. 4967. The writ must be served in the same manner as a summons in civil action except when otherwise expressly directed by the court.

The review under the writ, extent of.

SEC. 4968. The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board or officer has regularly pursued the authority of such tribunal, board or officer.

A defective return of the writ may be perfected.

Hearing and judgment.

SEC. 4969. If the return of the writ be defective, the court may order a further return to be made. When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming, or annulling, or modifying the proceedings below.

Copy of the judgment must be sent to the inferior tribunal.

SEC. 4970. A copy of the judgment signed by the Clerk, must be transmitted to the inferior tribunal, board or officer having the custody of the record or proceedings certified up.

Judgment roll.

SEC. 4971. A copy of the judgment signed by the Clerk, entered upon or attached to the writ and return, constitute the judgment roll.

CHAPTER II.

WRIT OF MANDATE.

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Mandamus defined.

SECTION 4976. The writ of mandamus may be denominated a writ of mandate.

When and by what court issued.

SEC. 4977. It may be issued by any court except a Justice's or Probate Court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and the enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Writ, when and upon what to issue.

SEC. 4978. The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

Writ must be either alternative or peremptory.

SEC. 4979. The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a specified time and place, why he has not done so. The peremptory writ must be in a similar form except that the words requiring the party to show cause why he has not done as commanded must be omitted, and a return day inserted.

If the application be without notice, the alternative writ may issue; otherwise, the peremptory notice and default.

SEC. 4980. When the application to the court is made without notice to the adverse party, and the writ be allowed the alternative must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory may be issued in the first instance. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court whether the adverse party appear or not.

The adverse party may answer under oath.

SEC. 4981. On the return of the alternative, or the day on which the application of the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

If an essential question of fact is raised, the court may order a jury trial.

SEC. 4982. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury and postpone the argument until such trial can be had and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the applicant may have sustained in case they find for him.

The applicant may demur to the answer, or countervail it by proof.

SEC. 4983. On the trial, the applicant is not precluded by the answer from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance.

Motion for new trial, where made.

SEC. 4984. The motion for new trial must be made in the court in which the issue of fact is tried.

Clerk must transmit verdict to court where motion is pending, after which hearing shall be had on motion.

SEC. 4985. If no notice of a motion for a new trial be given, or if given, the motion be denied, the clerk, within five days after rendition of the verdict or denial of the motion, must transmit to the court in which the application for the writ is pending, a certified copy of the verdict attached to the order of trial; after which either party may bring on the argument of the application, upon reasonable notice to the adverse party.

If no answer be made, or if it raise immaterial issues, proceedings.

SEC. 4986. If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue immaterial statements, not affecting the substantial rights of the parties, the court must proceed to hear or fix a day for hearing the argument of the case.

If applicant succeed, he may have damages, costs, and a peremptory mandate.

SEC. 4987. If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury, or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue; and a peremptory mandate must also be awarded without delay.

Service of the writ.

SEC. 4988. The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board or body was in session or not.

Penalty for disobedience of writ.

SEC. 4989. When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, board or person, if it appear to the court that any menber of such tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed, and may make any orders, necessary and proper for the complete enforcement of the writ.

CHAPTER III.

WRIT OF PROHIBITION.

SECTION
4994. Prohibition defined.
4995. Where and when issued.
4996. Writ may be alternative or peremptory. Form of.
4997. Certain provisions of the preceding chapter applicable.

SECTION 4994. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

Prohibition defined.

SEC. 4995. It may be issued by any court except Probate or Justices' Courts, to an inferior tribunal, or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

When and where issued.

SEC. 4996. The writ must be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the court from which it is issued, and to show cause before such court, at a specified time, and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, etc., must be omitted and a return day inserted.

Writ may be alternative or peremptory.

SEC. 4997. The provisions of the preceding sections from 4980 to 4989, both inclusive, apply to the proceedings for writ of prohibition.

Certain provisions of the preceding chapter applicable.

CHAPTER IV.

THESE WRITS MAY ISSUE AND BE HEARD AT CHAMBERS.

SECTION
5000. Writs of review, mandate, and prohibition may issue and be heard at chambers.

SECTION 5000. Writs of review, mandate, and prohibition may be issued by any of the Justices of the Supreme Court, or by any District Judge, in vacation, and may, in the discretion of the Justice or Judge issuing the writ, be made returnable and a hearing thereon be had in vacation.

Writs of review, mandate, and prohibition may issue and be heard at chambers.

CHAPTER V.

RULES OF PRACTICE AND APPEALS.

SECTION
5005. Certain provisions applicable.
SECTION
5006. Same.

Certain provisions applicable. SECTION 5005. Except as otherwise provided in this Title, the provisions of this Code relative to civil actions in the District Court, are applicable to and constitute the rules of practice in the proceedings mentioned in this Title.

Same. SEC. 5006. The provisions of this Code relative to new trials in and appeals from the District Court, except in and so far as they are inconsistent with the provisions of this Title, apply to the proceedings mentioned in this Title.

TITLE II.

OF CONTESTING CERTAIN ELECTIONS.

SECTION
5026. Who may contest, and grounds of contest.
5027. Irregularity and improper conduct of Judges.
5028. When not to annul elections.
5029. Illegal votes, when not to vitiate election.
5030. Proceedings on contest.
5031. Statement of cause of contest.
5032. Statement of cause of contest.
5033. Clerk to issue citation to respondent.

SECTION
5034. Witnesses, attendence of, how enforced.
5035. Power of court.
5036. Rules to govern court in trial of contest.
5037. Court may declare who was elected.
5038. Fees of officers.
5039. Costs.
5040. Appeal.
5041. When election void and office vacant.
5042. District offices.

Who may contest and grounds of contest.

SECTION 5026. Any elector of a county, precinct, or city, may contest the right of any person declared elected to an office to be exercised therein, for any of the following grounds:

1. For malconduct on the part of the Board of Judges, or any member thereof;

2. When the person whose right to the office is contested was not, at the time of the election, eligible to such office;

3. When the person whose right is contested has given to any Elector or Inspector, Judge, or Clerk of the election, any bribe or reward, or has offered any such bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise defined by law;

4. On account of illegal votes.

Irregularity and improper conduct of judges, when to annul elections.

SEC. 5027. No irregularity or improper conduct in the proceedings of the Judges, or any of them, is such malconduct as avoids an election, unless the irregularity or improper conduct is such as to procure the person whose right to the office is contested, to be declared elected, when he had not received the highest number of legal votes.

When not to.

SEC. 5028. When any election held for an office exercised in and for a county is contested on account of any malconduct on the part of the Board of Judges of any precinct election, or any member thereof, the election cannot be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct, or precincts, would change the result as to such office in the remaining vote of the county.

Illegal votes when not to vitiate election.

SEC. 5029. Nothing in the fourth ground of contest is to be so construed as to authorize an election to be set aside on account of illegal votes, unless it appear that a number of illegal votes has been given to the person whose right to the office is contested, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Proceedings on contest.

SEC. 5030. When an elector contests the right of any person declared elected to such office, he must, within forty days after the return day of the election, file with the Clerk of the District Court for the county a written statement, setting forth specifically:

1. The name of the party contesting such election, and that he is an elector of the district, county, or precinct, as the case may be, in which such election was held;
2. The name of the person whose right to the office is contested;
3. The office;
4. The particular grounds of such contest; which statement must be verified by the contesting party.

Statement of cause of contest.

SEC. 5031. When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that in one or more specified precincts illegal votes were given to the person whose election is contested, which, if taken from him, will reduce the number of his legal votes given to some other person for the same office; but no testimony can be received of any illegal votes, unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial; and no testimony can be received of any illegal votes except such as are specified in such list.

When based on reception of illegal votes, contestants to deliver to respondent a list of votes claimed to be illegal.

Statement of cause of contest, want of form not to vitiate.

SEC. 5032. No statement of the grounds of contest will be rejected, nor the proceedings dismissed by any court for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which such election is contested.

Clerk to issue citation to respondent, amended.

SEC. 5033. Upon the statement being filed, the Clerk must issue a summons as in a civil action, which, together with a certified copy of the statement, shall be delivered to the Sheriff of the county and be served upon the party whose right to the office is contested, in person, or, if he cannot be found, by leaving a copy thereof at the house where he last resided.

Witnesses, attendance of, how enforced.

SEC. 5034. The Clerk must issue subpœnas for witnesses at the request of either party, which must be served as other subpœnas; and the court has full power to issue attachments to compel the attendance of witnesses who have been subpœnaed to attend.

Power of court amended.

SEC. 5035. The court must, at the opening of its next regular term for the county, proceed to determine such contested election, and shall have all the powers necessary to the determination thereof.

Rules to govern court in trial of contest.

SEC. 5036. The court must be governed, in the trial and determination of such contested election, by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable; and may dismiss the proceedings if the statement of the cause or causes of the contest is insufficient, or for want of prosecution. After hearing the proofs and allegations of the parties, the court must pronounce judgment in the premises, either confirming or annulling and setting aside such election.

Court may declare who was elected.

SEC. 5037. If in any such case it appears that another person than the one returned has the highest number of legal votes, the court must declare such person elected.

Fees of officers and witnesses.

SEC. 5038. The Clerk, Sheriff and witnesses shall receive, respectively, the same fees, from the party against whom judgment is given, as are allowed for similar services in the District Court.

SEC. 5039. If the proceedings are dismissed for insufficiency or want of prosecution, or the election is by the court confirmed, judgment must be rendered against the party contesting such election, for costs, in favor of the party whose election was contested; but if the election is annulled and set aside, judgment for costs must be rendered against the party whose election was contested, in favor of the party contesting the same. Primarily each party is liable for the costs created by himself, to the officers and witnesses entitled thereto, which may be collected in the same manner as similar costs are collected in other cases. **Costs.**

SEC. 5040. Either party aggrieved by the judgment of the court, may appeal therefrom as in other cases. **Appeal.**

SEC. 5041. Whenever an election is annulled or set aside by the judgment of the District Court, and ten days have elapsed and no appeal has been taken, the commission if any has been issued, is void. **When election void and office vacant.**

SEC. 5042. Any elector of a district may in like manner contest the right of any person declared elected to a district office for like causes. Such contest shall be made and heard before any District Court or Judge of the District in any county of the district. **District officer.**

TITLE III.

OF SUMMARY PROCEEDINGS.

CHAPTER I.

CONFESSION OF JUDGMENT WITHOUT ACTION.

SECTION
5060. Judgment may be confessed.
5061. Statement in writing and form thereof.
5062. Filing statement and entering judgment.
5063. How, in Probate and Justices' Courts.

Judgment may be confessed for debt due, or contingent liability.

SECTION 5060. A judgment by confession may be entered without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any court having jurisdiction for like amounts.

Statement in writing and form thereof.

SEC. 5061. A statement in writing must be made, signed by the defendant and verified by his oath, to the following effect:

1. It must authorize the entry of judgment for a specified sum;
2. If it be for money due or to become due, it must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due or to become due;
3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

Filing statement and entering judgment.

SEC. 5062. The statement must be filed with the Clerk of the Court in which the judgment is to be entered, who must endorse upon it and enter in the judgment book, a judgment of such court for the amount confessed, with five dollars costs. The statement and affidavit with the judgment indorsed, thereupon becomes the judgment roll.

How, in probate and justices' courts.

SEC. 5063. In a Probate or Justices' Court, where the court has the authority to enter the judgment, the statement may be filed with the court or Justice, who must thereupon enter in his docket a judgment of his court for the amount confessed, with three dollars costs. If a transcript of such judgment be filed with the District Clerk, a copy of the statement must be filed with it.

CHAPTER II.

SUBMITTING A CONTROVERSY WITHOUT ACTION.

SECTION
5068. Controversy, how submitted without action.
5069. Judgment on, as in other cases.
5070. Judgment may be enforced or appealed from.

Controversy, how submitted without action.

SECTION 5068. Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought; but it must appear by affidavit, that the controversy is real and the proceedings in good faith, to determine the rights of the parties. The court must thereupon hear and determine the case and render judgment thereon, as if an action where depending.

SEC. 5069. Judgment must be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission and a copy of the judgment constitute the judgment roll.

Judgment on, as in other cases but without costs prior to notice of trial.

SEC. 5070. The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to appeal.

Judgment may be enforced or appealed from as in an action.

CHAPTER III.

DISCHARGE OF PERSONS IMPRISONED ON CIVIL PROCESS.

SECTION
5075. Persons confined may be discharged.
5076. Notice of application.
5077. Service of notice.
5078. Examination before Judge.
5079. Interrogatories may be in writing.
5080. Oath to be administered.
5081. Order of discharge.

SECTION
5082. If not discharged, prisoner may again apply, when.
5083. Discharge, final.
5084. Judgment remains in force.
5085. Plaintiff may order discharge of prisoner.
5086. Plaintiff to advance funds for support of prisoner.

SECTION 5075. Any person confined in jail on an execution issued on a judgment rendered in a civil action, must be discharged therefrom upon the conditions in this chapter specified.

Persons confined may be discharged.

SEC. 5076. Such person must cause a notice in writing to be given to the plaintiff, his agent or attorney, that at a certain time and place he will apply to the Judge of the District Court of the county in which such person may be confined; or, in case of his absence or inability to act, to the Judge of the Probate Court of the county in which such person may be imprisoned, for the purpose of obtaining a discharge from his imprisonment.

Notice of application.

SEC. 5077. Such notice must be served upon the plaintiff, his agent or attorney, one day at least before the hearing of the application.

Service of notice.

SEC. 5078. At the time and place specified in the notice, such person must be taken before such Judge, who must examine him under oath concerning his estate, and property, and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed, or any part thereof, and such Judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

Examination before judge.

SEC. 5079. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they must, if required by him, be proposed and answered in writing and the answer must be signed and sworn to by the prisoner.

Interrogatories may be in writing.

SEC. 5080. If, upon the examination, the Judge is satisfied that the prisoner is entitled to his discharge, he must administer to him the following oath, to wit: "I, ———— do solemnly swear that I have not any estate, real or personal, to the amount of fifty dollars, except such as is by law exempted from being taken in execution; and that I

Oath to be administered.

have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay, or defraud my creditors, so help me God."

Order of discharge.

SEC. 5081. After administering the oath the Judge must issue a order that the prisoner be discharged from custody, and the officer upon the service of such order, must discharge the prisoner forthwith, if he be imprisoned for no other cause.

If not discharged, prisoner may again apply, when.

SEC. 5082. If such Judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding thirty days, in the same manner as above provided and the same proceedings must thereupon be had.

Discharge final.

SEC. 5083. The prisoner after being so discharged, is forever exempted from arrest or imprisonment for the same debt, unless he be convicted of having willfully sworn falsely upon his examination before the Judge, or in taking the oath before prescribed.

Judgment remains in force.

SEC. 5084. The judgment against any prisoner who is discharged, remains in full force against any estate which may then or at any time afterward during the life of the judgment belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner in like manner as if he had never been committed.

Plaintiff may order discharge of prisoner, who shall not thereafter be liable, etc.

SEC. 5085. The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

Plaintiff to advance funds for support of prisoner.

SEC. 5086. Whenever a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent or attorney must advance to the jailer on such commitment, sufficient money for the board of the prisoner at the rate provided by law, for one week, and must make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer must forthwith discharge such prisoner from custody, and such discharge has the same effect as if made by order of the creditor.

CHAPTER IV.

SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY.

SECTION
5091. Forcible entry defined.
5092. Forcible detainer defined.
5093. Unlawful detainer defined.
5094. Service of notice.
5095. Courts have jurisdiction.
5096. Same.
5097. Same.
5098. Parties defendant.
5099. Parties generally.
5100. Complaint and summons.
5101. Arrest.

SECTION
5102. Judgment by default.
5103. Trial by jury.
5104. Showing required.
5105. Complaint must be amended in certain cases.
5106. Verdict and judgment.
5107. Verification of complaint and answer.
5108. Effect of appeal upon the judgment.
5109. Rules of practice. Appeals, how taken, etc.

Forcible entry defined.

SECTION 5091. Evey person is guilty of a forcible entry who either:

1. By breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or,

2. Who, after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

Forcible detainer defined.

SEC. 5092. Every person is guilty of a forcible detainer who either:

1. By force, or by menaces and threats of violence, unlawfully holds and keeps possession of any real property, whether the same was acquired peacefully or otherwise; or,

2. Who, in the night time, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender the same to such former occupant.

The occupant of real property, within the meaning of this subdivision, is one who, within five days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

Unlawful detainer defined, amended.

SEC. 5093. A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

1. When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any there be; but in case of a tenancy at will. it must first be terminated by notice, as prescribed in the Civil Code;

Amended.

2. Where he continues in possession, in person or by subtenant, without permission of his landlord, or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, or possession of the property, shall have been served upon him, and if there be a sub-tenant in actual occupation of the premises, also upon such sub-tenant. Such notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand of possession or notice to quit by the landlord, or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord, or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year;

3. Where he continues in possession in person, or by subtenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such sub-tenant. Within three days after the service of the notice, the tenant, or any sub-tenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions

or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided if the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice, at last prescribed herein, need be given to said lessee or his sub-tenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter, to obtain possession of premises let to an undertenant, in case of his unlawful detention of the premises underlet to him.

4. A tenant or sub-tenant, assigning or sub-letting, or committing waste upon the demised premises, contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three days' notice to quit, upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter.

Service of notice.

SEC. 5094. The notices required by the preceding section may be served, either:

1. By delivering a copy to the tenant personally; or,

2. If he be absent from his place of residence and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or, if such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a sub-tenant may be made in the same manner.

Courts have jurisdiction.

SEC. 5095. The District Court of the county in which the property or some part of it, is situated, has jurisdiction of proceedings under this chapter.

Jurisdiction of probate court under this chapter.

SEC. 5096. The Probate Court of the county in which the property, or some part of it, is situated, has jurisdiction of proceedings under this chapter when the whole amount of rent and damages claimed does not exceed five hundred dollars.

Jurisdiction of justices' courts under this chapter. Amended.

SEC. 5097. Justices' Courts have jurisdiction of proceedings under this chapter where the whole amount of rent and damages claimed does not exceed three hundred dollars.

Parties defendant. Amended.

SEC. 5098. No person other than the tenant of the premises, and sub-tenant, if there be one, in the actual occupation of the premises when the notice herein provided for was served, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be non-suited for the non-joinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against him. Any person who shall become a sub-tenant of the premises or any part thereof after the service of notice as provided in this chapter shall be bound by the judgment. In case a married woman be a tenant or a sub-tenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader; and execution issued upon a personal judgment against her, can only be enforced against property on the premises at the commencement of the action.

Parties generally.

SEC. 5099. Except as provided in the preceding section the provisions of this Code, relating to parties to civil actions, are applicable to this proceeding.

The complaint.

SEC. 5100. The plaintiff in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover and describe the premises with reasonable certainty and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon returnable as in other cases.

Summons to issue.

Arrest.

SEC. 5101. If the complaint presented establishes, to the satisfaction of the Judge or Justice, fraud, force, or violence in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.

Judgment by default.

SEC. 5102. If, at the time appointed, the defendant do not appear and defend, the court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

Trial by jury.

SEC. 5103. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

Showing required of plaintiff, forcible entry on detainer of defendant.

SEC. 5104. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein, is not then ended or determined; and such showing is a bar to the proceedings.

Complaint must be amended in certain cases.

SEC. 5105. When upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the Judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance shall be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

Verdict and judgment.

SEC. 5106. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any sub-tenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but, if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Verification of complaint and answer.

SEC. 5107. The complaint and answer must be verified.

Effect of an appeal upon judgment.

SEC. 5108. An appeal taken by the defendant does not stay proceedings upon the judgment unless the court so directs.

Provisions applicable to proceedings under this chapter.

SEC. 5109. The provisions of this Code, relative to civil actions, appeals, and new trials, so far as they are not inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

TITLE IV.

OF THE ENFORCEMENT OF LIENS.

SECTION
5125. Liens of mechanics and others.
5126. Sub-contractors and others.
5127. Liens for grading and filling lots.
5128. Interest in the land.
5129. Effect of liens.
5130. Claim of lien.
5131. Liens upon two or more pieces of property, each to be designated.
5132. Claim to be recorded.
SECTION
5133. Time of continuance.
5134. Sub-contractors.
5135. Recovery by contractor.
5136. Court to declare rank of liens.
5137. Actions for separate liens.
5138. Lien does not impair right to action.
5139. Rules of practice. New trials and appeals.

What laborers, contractors, etc., may have liens upon.

SECTION 5125. Every person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct, to create hydraulic power, or any other structure, or who performs labor in any mining claim, has a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, but the aggregate amount of such liens must not exceed the amount which the owner would be otherwise liable to pay.

Notice by sub-contractor, etc., and lien for amount due contractor.

SEC. 5126. Any sub-contractor, material man, laborer, or other person, performing labor or furnishing materials for a contractor who is entitled to a lien under the provisions of the last section, may, at any time, serve upon the owner, or his agent, or the person employing the contractor, written notice of the amount due him for such labor or materials, and such sub-contractor, material man, laborer, or other person, may have a lien for such amount, but not exceeding the amount then or thereafter due such contractor from such owner, or person employing him, under the contract. And any person furnishing materials, or performing labor for a sub-contractor, may, by like notice to the contractor, be subrogated to the rights of such sub-contractor.

Liens for grading and filling lots and streets.

SEC. 5127. Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such lot for his work done and materials furnished.

What interest in the land subject to the lien, amended.

SEC. 5128. The land upon which any building, improvement, or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, is also subject to the liens, if, at the time of the commencement of the work or of the furnishing of the materials for the same, the land belonged to the person who caused said building, improvement, or structure to be constructed; altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

Effect of liens.

SEC. 5129. The liens provided for in this chapter are preferred to any lien, mortgage, or other incumbrance which may have attached subsequent to the time when the building, improvement, structure or work was commenced or materials were commenced to be furnished; also, to any lien, mortgage, or other incumbrance of which the lienholder had no notice, and which was unrecorded at the time the building, improvement, or structure was commenced, work done, or the materials were commenced to be furnished.

Claim of lien to be filed in recorder's office.

SEC. 5130. Every original contractor, within sixty days after the completion of his contract, and every person, save the original contractor, claiming the benefit of this chapter, must, within thirty days after the completion of any building, improvement, or structure, or after the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the County Recorder of the county in which such property, or some part thereof, is situated, a claim containing a statement of his demand, after deducting all just credits and off-sets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the material, with a statement of the terms, time given, and conditions of his contract, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or some other person.

Liens upon two or more pieces of property.

SEC. 5131. In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims or other improvements; otherwise, the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated, as against other creditors having liens, by judgment, mortgage, or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

Amount due from each to be designated.

Claim to be recorded, fees of recorder.

SEC. 5132. The Recorder must record the claim in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments.

Time of continuance of lien.

SEC. 5133. No lien provided for in this Title, binds any building, mining claim, improvement or structure, for a longer period than ninety days after the same has been filed, unless proceedings be commenced in a proper court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; but no lien continues in force for a longer time than two years from the time the work is completed, by any agreement to give credit.

Sub-contractors, who are, and when paid out of proceeds of sale.

SEC. 5134. All persons entitled to liens on the structure or improvement, except those who contracted with the owner thereof, are sub-contractors, and the court in the judgment must direct the amount due sub-contractors to be paid out of the proceeds of sales before any part of such proceeds are paid to the contractor.

Measure of recovery by contractor, protection of owner's rights.

SEC. 5135. The contractor shall be entitled to recover upon a lien filed by him, only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid; and in all cases where a lien shall be filed under this Title for work done or materials furnished to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the lien is filed; and in case of judgment against the owner or his property, upon the lien, the said owner shall be entitled to deduct from any amount due, or to become due by him to the contractor, the amount of such judgment and costs.

Court to declare rank of liens.

SEC. 5136. In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz.: *First*, All persons other than the original contractors and sub-contractors. *Second*, The sub-contractors. *Third*, The original contractors. And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank, and whenever on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages.

Separate actions may be consolidated, costs.

SEC. 5137. Any number of persons claiming liens may join or intervene in the same action, and when separate actions are commenced, the court may consolidate them. The court may also allow as part of the costs, the moneys paid for filing and recording the lien.

Liens not to impair right to personal action.

SEC. 5138. Nothing contained in this Title shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.

Provisions applicable to proceedings under this title.

SEC. 5139 Except as otherwise provided in this Title, the provisions of this Code relating to civil actions, new trials and appeals, are applicable to, and constitute the rules of practice in the proceedings mentioned in this Title.

TITLE V.

OF CONTEMPTS.

SECTION
5155. What acts or commissions are contempts.
5156. Re-entry on property after eviction, when a contempt.
5157. A contempt committed in the presence of the court may be punished summarily. When not so committed, an affidavit or statement shall be made.
5158. A warrant of attachment may issue or a notice to show cause.
5159. Bail may be given by a person arrested under such warrant.
5160. Sheriff must, upon executing the warrants, arrest and detain the person until discharged.

SECTION
5161. Bail bond, form and conditions of.
5162. Officer must return warrant and undertaking, if any.
5163. Hearing.
5164. Judgment and penalty, if guilty.
5165. If the contempt is the omission to perform any act, the person may be imprisoned until performance.
5166. If a party fail to appear, proceedings.
5167. Illness sufficient cause for non-appearance of party arrested. Confinement under arrest for contempt.
5168. Judgment and orders in such cases final.

What acts or omissions are contempts.

SECTION 5155. The following acts or omissions in respect to a Court of Justice, or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous or insolent behavior toward the Judge while holding the court, tending to interrupt the due course of a trial or other judicial proceedings;

2. A breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceedings;

3. Misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, Clerk, Sheriff, Coroner or other person appointed or elected to perform a judicial or ministerial service;

4. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

5. Disobedience of any lawful judgment, order, or process of the court;

6. Assuming to be an officer, attorney, counsel of a court, and acting as such without authority;

7. Rescuing any person or property in the custody of an officer by virtue of an or order or process of such court;

8. Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

9. Any other unlawful interference with the process or proceedings of a court;

10. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness;

11. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

12. Disobedience, by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, mag-

istrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer.

Re-entry on property after evictions, when a contempt.

SEC. 5156. Every person dispossessed or ejected from or out of any real property by the judgment or process of any court of competent jurisdiction, and who, not having right so to do, re-enters into or upon, or takes possession of, any such real property, or induces or procures any person not having right so to do, or aids or abets him therein, is guilty of a contempt of the court by which such judgment was rendered, or from which such process issued. Upon a conviction for such contempt, the court or Justice of the Peace must immediately issue an alias process directed to the proper officer, and requiring him to restore the party entitled to the possession of such property under the original judgment or process, to such possession.

A contempt committed in the presence of the court may be punished summarily, when not so committed an affidavit or statement shall be made.

SEC. 5157. When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occuring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. When the contempt is not committed in the immediate view and presence of the court, or judge at chambers, an affidavit shall be presented to the court, or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officer.

A warrant of attachment may issue, or a notice to show cause.

SEC. 5158. When the contempt is not committed in the immediate view and presence of the court or Judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

Bail may be given by a person arrested under such warrant.

SEC. 5159. Whenever a warrant of attachment is issued, pursuant to this Title, the court or judge must direct, by an indorsement on such warrant, that the person charged may be let to bail for his appearance, in an amount to be specified in such indorsement.

Sheriff must, upon executing the warrant, arrest and detain the person until discharged.

SEC. 5160. Upon executing the warrant of attachment, the sheriff must keep the person in custody, bring him before the court or judge, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

Bail bond, form and conditions of.

SEC. 5161. When a direction to let the person arrested to bail is contained in the warrant of attachment, or indorsed thereon, he must be discharged from the arrest, upon executing and delivering to the officer, at any time before the return day of the warrant, a written undertaking, with two sufficient sureties, to the effect that the person arrested will appear on the return of the warrant and abide the order of the court or judge thereupon; or they will pay as may be directed, the sum specified in the warrant.

Officer must return warrant and undertaking, if any.

SEC. 5162. The officer must return the warrant of arrest and undertaking, if any, received by him from the person arrested, by the return day specified therein.

Hearing.

SEC. 5163. When the person arrested has been brought up or appeared, the court or judge must proceed to investigate the charge, and must hear any answer which the person arrested may make to the same, and may examine witnesses for or against him, for which an adjournment may be had from time to time, if necessary.

Judgment and penalty, if guilty.

SEC. 5164. Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars, or he may be imprisoned not exceeding five days, or both.

If the contempt is omission to perform any act, the person may be imprisoned until performance.

SEC. 5165. When the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he have performed it, and in that case the act must be specified in the warrant of commitment.

If a party fail to appear, proceedings.

SEC. 5166. When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the court or judge may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, the measure of damages in the action is the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued, and the costs of the proceeding.

Illness, sufficient cause for non-appearance of party arrested. Confinement under arrests for contempt.

SEC. 5167. Whenever, by the provisions of this Title, an officer is required to keep a person arrested on a warrant of in custody, and to bring him before a court or judge, the inability, from illness or otherwise, of the person to attend, is a sufficient excuse for not bringing him up; and the officer must not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far as may be necessary to secure his personal attendance.

Judgment and orders in such cases final.

SEC. 5168. The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive.

TITLE VI.

VOLUNTARY DISSOLUTION OF CORPORATIONS.

SECTION
5185. How dissolved.
5186. Application, what to contain.
5187. Application, how signed and verified.
5188. Filing application and publication of notice.
5189. Objections may be filed.
5190. Hearing of application.
5191. Judgment rolls and appeals.

SECTION 5185. A corporation may be dissolved by the District Court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

How dissolved.

SEC. 5186. The application must be in writing and set forth:

Application, what to contain.

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-third vote of all the stockholders or members;

2. That all claims and demands against the corporation have been satisfied and discharged.

SEC. 5187. The application must be signed by a majority of the Board of Trustees, Directors, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

Application, how signed and verified.

SEC. 5188. If the Judge is satisfied that the application is in conformity with this Title, he must order it to be filed with the Clerk, and that the Clerk give not less than thirty days' notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisements posted up in three of the principal public places in the county.

Filing application and publication of notice.

SEC. 5189. At any time before the expiration of the time of publication, any person may file his objections to the application.

Objections may be filed.

SEC. 5190. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements herein made are shown to be true, he must declare the corporation dissolved.

Hearing of application.

SEC. 5191. The application, notices, and proofs of publication, objections (if any), and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken as from judgments of the county courts.

Judgment roll and appeal.

TITLE VII.

OF EMINENT DOMAIN.

SECTION
5210. Purposes for which it may be exercised.
5211. What estates in land may be acquired by condemnation.
5212. Private property, defined. Classes enumerated.
5213. Facts necessary to be found by court, before condemnation.
5214. Parties may make location. May enter to make surveys.
5215. Jurisdiction in District Court.
5216. The complaint and its contents.
5217. Summons, what to contain. How issued and served.
5218. Who may defend. What the answer may show.
5219. Court shall have jurisdiction to regulate the mode of making crossings or of enjoying a common use.
SECTION
5220. Court or jury to assess damages.
5221. The date with respect to which compensation shall be assessed, and the measure thereof.
5222. New proceedings to cure defective title.
5223. Payment of damages, or deposit of bond therefor.
5224. Damages, to whom paid.
5225. Final order of condemnation, what to contain. When filed, title vests.
5226. Putting plaintiff in possession.
5227. Costs may be allowed, distribution thereof.
5228. Rules of practice. New trials and appeals.
5229. Streets and cities and towns.

Eminent domain may be exercised.

SECTION 5210. Subject to the provisions of this Title, the right of eminent domain may be exercised in behalf of the following public uses:

1. Public buildings and grounds for the use of the Territory, and all other public uses authorized by the Legislature;

2. Public buildings and grounds for the use of any county, incorporated city, village, town or school districts, canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county, incorporated city, village, or town; or for draining any county, incorporated city, village, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, incorporated city, village or town, or the inhabitants thereof;

3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll-roads, by roads, plank and turnpike roads, steam and horse railroads; canals, ditches, flumes, aqueducts and pipes, for public transportation, supplying mines, and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable;

4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also, outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines;

5. By-roads leading from highways to residences and farms;

6. Telegraph and telephone lines;

7. Sewerage of any incorporated city.

Estates and rights subject to condemnation.

SEC. 5211. The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, or for an outlet

for a flow, or a place for the deposit of debris or tailings of a mine;

2. An easement, when taken for any other use;

3. The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

Private property defined.

SEC. 5212. The private property which may be taken under this Title includes:

Classes enumerated.

1. All real property belonging to any person;

2. Lands belonging to this Territory, or to any county, incorporated city, or city and county, village or town, not appropriated to some public use;

3. Property appropriated to public use; but such property shall not be taken unless for a more necessary public use than that to which it has been already appropriated;

4. Franchises for toll roads, toll bridges, and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use;

5. All rights of way for any and all the purposes mentioned in section 5210, and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They shall also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections and connections shall be made in manner most compatible with the greatest public benefit and least private injury;

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

Facts necessary to be found by court before condemnation.

SEC. 5213. Before property can be taken, it must appear:

1. That the use to which it is to be applied is a use authorized by law;

2. That the taking is necessary to such use;

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

Parties may make location.

SEC. 5214. In all cases where land is required for public use, the Territory or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of this title. The Territory or its agents in charge of such public use, may enter upon the land and make examinations, surveys, and maps thereof, and such entry shall constitute no cause for action in favor of the owners of the land, except for injuries resulting from negligence, wantonness or malice.

May enter to make surveys.

Jurisdiction in district court.

SEC. 5215. All proceedings under this title, must be brought in the District Court for the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

SEC. 5216. The complaint must contain:

The complaint and its contents.

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiffs;

2. The names of all owners and claimants of the property if known, or a statement that they are unknown, who must be styled defendants;

3. A statement of the right of the plaintiff;

4. If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with maps thereof;

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of an entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them, to suit the convenience of parties.

Summons, what to contain.

SEC. 5217. The clerk must issue a summons, which must contain the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, and a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions, and must be served in like manner.

How issued and served.

Who may defend, what the answer may show.

SEC. 5218. All persons in occupation of, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead, and defend, each in respect to his own property or interest, or that claimed by him, in like manner as if named in the complaint.

Court shall have jurisdiction to regulate the mode of making crossings or of enjoying a common use.

SEC. 5219. The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in the fifth subdivision of section 5212;

2. To hear and determine all adverse or conflicting claims to the property sought to be condemned, and to the damages therefor.

3. To determine the respective rights of different parties seeking condemnation of the same property.

Court or jury to assess damages.

SEC. 5220. The court, jury, or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed.

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff.

3. Separately, how much the portion not sought to be condemned, and each estate or interest therein, will be specially and directly benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the bene-

fit shall be equal to the damages assessed, under subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value;

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad;

5. As far as practicable, compensation must be assessed for each source of damages separately.

The date with respect to which compensation shall be assessed, and the measure thereof.

SEC. 5221. For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value, at that date, shall be the measure of compensation for all property to be actually taken, and the basis of damages to property not actually taken, but injuriously affected, in all cases where such damages are allowed, as provided in the last section. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or damages.

New proceedings to cure defective title.

SEC. 5222. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this Title prescribed.

Payment of damages, or deposit of bond therefor.

SEC. 5223. The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before payment, elect to build the fences and cattle guards; and if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court in double the assessed cost of the same, to build such fences and cattle guards within eight months from the time the railroad is built on the land taken, and if such bond is given, need not pay the cost of such fences and cattle guard. In an action on such bond the plaintiff may recover reasonable attorney's fees.

Damages, to whom paid.

SEC. 5224. Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

Final order of condemnation, what to contain.

SEC. 5225. When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the Recorder of the County, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

When filed, title vests.

Putting plaintiff in possession. 14 ses.

SEC. 5226. At any time after trial and judgment entered or pending on appeal from the judgment to the Supreme Court, whenever the plaintiff shall have paid into the court for the defendant, the full amount of the judgment, and such further sum as shall be required by the court as a fund to pay any further damages and costs that may be recovered in said proceedings as well as all damages that may be sustained by the defendant, if for any cause the property shall not be finally taken for public use, the District Court in which the proceeding was tried may, upon notice of not less than ten days, authorize the plaintiff if already in possession to continue therein, and if not, to take possession of and use the property during the conclusion of the litigation, and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof.

The defendant who is entitled to the money paid into court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. It shall be the duty of the court or the Judge thereof, upon application being made by such defendant, to order and direct that the money so paid into court for him, to be delivered to him upon his filing a satisfaction of the judgment or upon his filing a receipt therefor and an abandonment of all defenses to the action or proceeding except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to a defendant as aforesaid shall be held to be an abandonment by such defendant of all defenses interposed by him excepting his claim for greater compensation. The court may order the money to be deposited in the county treasury, and in such case it shall be the duty of the treasurer to receive all such moneys, duly receipt for, and safely keep the same and to pay out such moneys in such manner, and at such times, as the court or Judge thereof may direct, and for such duty he shall be liable to the plaintiff upon his official bond. *Provided, further*, That at any time after the commencement of proceedings, in the District Court, as provided for in this Title, to condemn property and upon ten days' notice to the adverse party, the District Court may appoint three disinterested persons, who shall be residents of the county in which the land is situated as commissioners to assess and determine the damages that the defendant will sustain by reason of the condemnation and appropriation of the property described in the complaint, and the said commissioners shall, before entering upon the discharge of their duties, take and subscribe an oath to faithfully and impartially discharge their duties as such commissioners. Such commissioners shall give in writing at least five days' notice of the time and place where they will meet for the purpose aforesaid, which place, unless agreed upon between the parties, shall be within five miles of the premises aforesaid; at the time and place mentioned in such notice they may administer oaths to witnesses, and hear the evidence offered by the parties, and after viewing the premises shall report in writing their proceedings and the damages which they find the defendant will sustain by reason of the condemnation and appropriation of said property, which report shall be signed by said commissioners, or a majority thereof, and be filed in the office of the Clerk of the District Court in which such actions shall be pending; and at any time after payment to the defendant of the amount so assessed and found by said commissioners as damages, or in case the defendant shall refuse to receive the same, then at any time after such amount shall be deposited with the Clerk of the said court to abide the result of said action, the plaintiff may enter upon and take possession of and use the property mentioned in the complaint, until the final conclusion of the litigation concerning the same. *Provided further*, That the amount of damages so assessed and determined by said commissioners shall not be offered in, or be made known to the jury upon the trial of such proceedings.

[Act Feb. 10, 1887. In effect June 1, 1887.]

Costs may be allowed, distribution thereof.

SEC. 5227. Costs may be allowed or not, and if allowed, may be apportioned between the parties on the same or adverse sided, in the discretion of the court.

Provisions applicable to proceedings under this title.

SEC. 5228. Except as otherwise provided in this Title, the provisions of this Code relative to civil actions and new trials and appeals, are applicable to and constitute the rules of practice in the proceedings in this Title.

Exceptions.

SEC. 5229. Nothing in this Code must be construed to abrogate or repeal any statute providing for the taking of property in any city or town for street purposes.

TITLE VIII.

OF CHANGE OF NAMES.

SECTION
5245. Jurisdiction.
5246. Application for change of name, how made.
SECTION
5247. Publication of petition for.
5248. Hearing of application and remonstrance.

Jurisdiction.

SECTION 5245. Application for change of names must be heard and determined by the district courts.

Application for change of name, how made.

SEC. 5246. All applications for change of names must be made to the District Court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under twenty-one years of age, if a male, and under the age of eighteen years, if a female, by one of the parents, if living; or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name, and must, if the father of such person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, or scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of any benevolent or charitable order, or society, may by petition, apply to the District Court of the county in which the property of said corporation is situated, for a change of its corporate name. Such petition must be signed by the trustees of the corporation, or by a majority of them, and must specify the date of the formation of the corporation, its present name, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings must be had as upon applications for changes of names of natural persons.

Corporation, change of name.

Publication of petition for.

SEC. 5247. A copy of such petition must be published for four successive weeks, in some newspaper printed in the county, if a newspaper be printed therein, but if no newspaper be printed in the county, a copy of such petition must be posted at three of the most public places in the county for a like period, and proofs must be made of such publication before the petition can be considered.

Hearing of application and remonstrance.

SEC. 5248. Such application must be heard at such time during term as the court may appoint, and objections may be filed by any person who can, in such objections, show to the court, good reason against such change of name. On the hearing the court may examine, upon oath, any of the petitioners, remonstrants, or other persons, touching the application, and may make an order changing the name or dismissing the application, as to the court may seem right and proper.

TITLE IX.

OF ARBITRATIONS.

SECTION
5260. What may be submitted to arbitration, and when.
5261. Submission to arbitration to be in writing.
5262. Submission may be entered as an order of the court. Revocation.
5263. Powers of arbitrators.
5264. Majority of arbitrators may determine any question.
5265. Award to be in writing. When judgment to be entertd.

SECTION
5266. Award may be vacated in certain cases.
5267. Court may, on motion, modify or correct the award.
5268. Decision on motion, subject to appeal, but not the judgment entered before motion.
5269. If submission be revoked and an action brought, what to be recovered.

SECTION 5260. Persons capable of contracting may submit to arbitration any controversy which might be the subject of a civil action between them, except a question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

What may be submitted to arbitration, and when.

SEC. 5261. The submission to arbitration must be in writing, and may be to one or more persons.

Submission to arbitration to be in writing.

SEC. 5262. It may be stipulated in the submission, that it be entered as an order of the District Court, for which purpose it must be filed with the Clerk of said court for a county where the parties, or one of them reside. The Clerk must thereupon enter in his register of actions a note of the submission, with the names of the parties, the names of the arbitrators, the date of the submission, when filed, and the time limited by the submission, if any, within which the award must be made. When so entered, the submission cannot be revoked without the consent of both parties. The arbitrators may be compelled by the court to make an award, and the award may be enforced by the court in the same manner as a judgment. If the submission is not made an order of the court, it may be revoked at any time before the award is made.

Submission may be entered as an order of the court.

Revocation.

SEC. 5263. Arbitrators have power to appoint a time and place for hearing, to adjourn from time to time, to administer oaths to witnesses, to hear the allegations and evidence of the parties, and to make an award thereon.

Powers of arbitrators.

SEC. 5264. All the arbitrators must meet and act together during the investigation; but when met, a majority may determine any question. Before acting they must be sworn before an officer authorized to administer oaths, faithfully and fairly to hear and examine the allegations and evidence of the parties in relation to the matters in controversy, and to make a just award according to their understanding.

Majority of arbitrators may determine any question; they must be sworn.

SEC. 5265. The award must be in writing, signed by the arbitrators, or a majority of them, and delivered to the parties. When the submission is made an order of the court, the award must be filed with the Clerk, and a note thereof made in his register. After the expiration of five days from the filing of the award, upon the application of a party and on filing of an affidavit showing that notice of filing the award has been served on the adverse party or his attorney at least four days prior to such application, and that no or-

Award to be in writing.

When judgment to be entered.

der staying the entry of judgment has been served, the award must be entered by the Clerk in the judgment book, and thereupon has the effect of a judgment.

Award may be vacated in certain cases.

SEC. 5266. The court on motion may vacate the award upon either of the following grounds, and may order a new hearing before the same arbitrators, or not, in its discretion:

1. That it was procured by corruption or fraud;

2. That the arbitrators were guilty of misconduct or committed gross error in refusing on cause shown, to postpone the hearing, or in refusing to hear pertinent evidence, or otherwise acted improperly, in a manner by which the rights of the party were prejudiced;

3. That the arbitrators exceeded their powers in making their award; or that they refused, or improperly omitted to consider a part of the matters submitted to them; or that the award is indefinite or cannot be performed.

Court may, on motion, modify or correct the award.

SEC. 5267. The court may, on motion, modify or correct the award where it appears:

1. That there was a miscalculation in figures upon which it was made, or that there is a mistake in the description of some person or property therein;

2. When a part of the award is upon matters not submitted, which part can be separated from other parts, and does not effect the decision on the matters submitted;

3. When the award, though imperfect in form, could have been amended if it had been a verdict, or the imperfection disregarded.

Decision, on motion, subject to appeal, but not the judgment entered before motion.

SEC. 5268. The decision upon either motion is subject to appeal in the same manner as an order which is subject to appeal in a civil action; but the judgment, if entered before a motion made, cannot be subject to appeal.

If submission be revoked and an action brought, what to be recovered

SEC. 5269. If a submission to arbitration be revoked, and an action be brought therefor, the amount to be recovered can only be the costs and damages sustained in preparing for and attending the arbitration.

TITLE X.

OF PROCEEDINGS IN PROBATE COURTS.

CHAPTER I.

OF JURISDICTION.

SECTION
5290. Jurisdiction of Probate Court over the estate, when exercised.

SECTION
5291. When jurisdiction decided by first application.

SECTION **5290.** Wills must be proved, and letters testamentary or of administration granted:

Jurisdiction of probate court over the estate, when exercised.

1. In the county of which the decedent was a resident at the time of his death, in whatever place he may have died;
2. In the county in which the decedent may have died, leaving estate therein, he not being a resident of the Territory.
3. In the county in which any part of the estate may be, the decedent having died out of the Territory, and not resident thereof at the time of his death;
4. In the county in which any part of the estate may be, the decedent not being a resident of the Territory, and not leaving estate in the county in which he died;
5. In all other cases, in the county where application for letters is first made.

When jurisdiction decided by first application.

SEC. **5291.** When the estate of the decedent is in more than one county, he having died out of the Territory, and not having been a resident thereof at the time of his death, or being such non-resident and dying within the Territory, and not leaving estate in the county where he died, the Probate Court of that county in which application is first made for letters testamentary or of administration, has exclusive jurisdiction of the settlement of the estate.

CHAPTER II.

OF THE PROBATE OF WILLS.

SECTION
5296. Custodian of will to deliver same to whom, penalty.
5297. Who may petition for probate of will.
5298. Contents of petition.
5299. When executor forfeits right to letters.
5300. Will to accompany petition, or its presentation prayed for and how enforced.
5301. Notice of petition for probate, how given.
5302. Heirs and named executors to be notified, how.
5303. Petition may be presented to Judge at chambers, and what Judge may do.
5304. Hearing proof of will after proof of service of notice.
5305. Who may appear and contest the will.
5306. Probate, when no contest.
5307. Olographic wills.
5308. Contestant to file grounds of contest, and petition to reply.
5309. How jury obtained and trial had.
5310. Verdict of the jury. Judgment. Appeal.
5211. Witnesses, who and how many to be examined. Proof of handwriting admitted, when.
5312. Testimony reduced to writing for future evidence.
5313. If proved, certificate to be attached.
5314. Will and proof to be filed and recorded.
SECTION
5315. Wills proved in other states to be recorded, when and where.
5316. Proceedings on the production of a foreign will.
5317. Hearing proofs of probate of foreign will.
5318. The probate may be contested within one year.
5319. Citation to be issued to parties interested.
5320. The hearing had on proof of service.
5321. Petitions to revoke probate of will tried by a jury or court. Judgment, what.
5322. On revocation of probate, powers of executor, etc., cease, but not liable for acts in good faith.
5323. Costs and expenses, by whom paid.
5324. Probate when conclusive. One year after removal of disability given to infants and others.
5325. Proof of lost or destroyed will to be taken.
5326. Must have been in existence at time of death.
5327. To be certified, recorded, and letters thereon granted.
5328. Court to restrain injurious acts of executors or administrators during proceedings to prove lost will.
5329. Nuncupative wills, when and how admitted to probate.
5330. Additional requirements in probate, nuncupative wills.
5331. Contests and appointments to conform to provisions as to other wills.

Custodian of will to deliver same to whom.

SECTION 5296. Every custodian of a will, within thirty days after receipt of information that the maker thereof is dead, must deliver the same to the Probate Court having jurisdiction of the estate, or to the executor named therein. A failure to comply with the provisions of this section makes the person failing responsible for all damages sustained by any one injured thereby.

Who may petition for probate of will.

SEC. 5297. Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, whether the same be in writing, in his possession or not, or is lost or destroyed, or beyond the jurisdiction of the Territory, or a nuncupative will.

Contents of a petition.

SEC. 5298. A provision for the probate of a will must show:

1. The jurisdictional facts;
2. Whether the person named as executor consents to act, or renounces his rights to letters testamentary;
3. The names, ages, and residence of the heirs and devisees of the decedent, so far as known to the petitioner;
4. The probable value and character of the property of the estate;
5. The name of the person for whom letters testamentary are prayed.

No defect of form, or in the statement of jurisdictional facts actually existing, shall make void the probate of a will.

When executor forfeits rights to letters.

SEC. 5299. If the person named in a will as executor, for thirty days after he has knowledge of the death of the testator, and that he is named as executor, fails to petition the proper court for the probate of the will and that letters testamentary be issued to him, he may be held to have renounced his right to letters, and the court may appoint any other competent person administrator, unless good cause for delay is shown.

Will to accompany petition, or its presentation prayed for and how enforced.

SEC. 5300. If it is alleged in any petition that any will is in possession of a third person, and the court is satisfied that the allegation is correct, an order must be issued and served upon the person having possession of the will, requiring him to produce it at a time named in the order.

If he has possession of the will and neglects or refuses to produce it in obedience to the order, he may by warrant from the court, be committed to the jail of the county, and be kept in close confinement until he produces it.

Notice of petition for probate, how given.

SEC. 5301. When the petition is filed and the will produced, the Probate Judge must fix a day for hearing the petition, not less than ten nor more than thirty days from the production of the will. Notice of the hearing shall be given by the Clerk of the Court, by publishing the same in a newspaper of the county. If there is none, then by three written or printed notices posted at three of the most public places in the county. If the notice is published in a weekly newspaper, it must appear therein on at least three different days of publication, and if in a newspaper published oftener than once a week, it shall be so published that there must be at least ten days from the first to the last day of publication, both the first and the last day being included. If the notice is by posting, it must be given at least ten days before the hearing.

Heirs and named executors to be notified, how.

SEC. 5302. Copies of the notice of the time appointed for the probate of the will must be addressed to the heirs of the testator resident in the Territory, at their places of residence, if known to the petitioner, and deposited in the postoffice, with the postage thereon paid, at least ten days before the hearing. If their places of residence be not known, the copies of notice may be addressed to them and deposited in the postoffice at the county seat of the county where the proceedings are pending. A copy of the same notice must in like manner be mailed to the person named as executor, if he be not the petitioner; also to any person named as co-executor not petitioning, if their places of residence be known. Proof of mailing the copies of the notice must be made at the hearing. Personal service of copies of the notice at least ten days before the day of hearing, is equivalent to mailing.

Petition may be presented to judge at chambers, and what judge may do.

SEC. 5303. The Probate Judge may, out of term time or at chambers, receive petitions for the probate of wills, and make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses, and may appoint special terms of his court for hearing the petitions, trials of issues, and admitting to probate.

Hearing proof of will after proof of service of notice.

SEC. 5304. At the time appointed for, or to which the hearing may have been postponed, the court must require proof, by affidavit, that the notices hereinbefore required have been personally served or mailed and published, which being made, the court must hear testimony in proof of the will.

If such notice is not proved to have been given, or if, from any other cause, it is necessary, the hearing may be postponed to a day certain, and notice to absentees, given thereof, as original notice is required to be given. The appearance in court of parties interested is a waiver of notice.

Who may appear and contest the will.

SEC. 5305. Any person interested may appear and contest the will. Devisees, legatees, heirs, or creditors of an estate may contest the will through their guardians, or attorneys appointed by themselves or by the court for that purpose; but a contest made by an attorney appointed by the court does not bar a contest after probate, by the party so represented, if commenced within the time provided in this chapter; nor does the non-appointment of an attorney by the court of itself invalidate the probate of a will.

Probate, when no contest.

SEC. 5306. If no person appears to contest the probate of a will, the court may admit it to probate on the testimony of one of the subscribing witnesses only, if he testifies that the will was executed in all particulars as required by law, and that the testator was of sound mind at the time of its execution.

Olographic wills.

SEC. 5307. An olographic will may be proved in the same manner that other private writings are proved.

Contestant to file grounds of contest, and petitioner to reply.

SEC. 5308. If any one appears to contest the will, he must file written grounds of opposition to the probate thereof, and serve a copy on the petitioner and other residents of the county interested in the estate, any one or more of whom may demur thereto upon any of the grounds of demurrer to a complaint in civil actions. If the demurrer is sustained, the court must allow the contestant a reasonable time, not exceeding ten days, within which to amend his written opposition. If the demurrer is overruled, the petitioner and others interested may jointly or separately answer the contestant's grounds, traversing, or otherwise obviating or avoiding the objections. Any issues of fact thus raised, involving:

1. The competency of the decedent to make a last will and testament;

2. The freedom of the decedent at the time of the execution of the will from duress, menace, fraud, or undue influence;

3. The due execution and attestation of the will by the decedent or subscribing witnesses; or,

4. Any other questions substantially affecting the validity of the will;

Must, on request of either party in writing (filed three days prior to the day set for the hearing), be tried by a jury. If no jury is demanded, the court must try and determine the issues joined. On the trial the contestant is plaintiff, and the petitioner is defendant.

How jury obtained and trial had.

SEC. 5309. When a jury is demanded, the Probate Court must summons and impanel a jury to try the case, in the manner provided for summoning and impaneling trial juries in civil actions. and the trial must be conducted in the same manner as the trial of civil actions in the District Court.

Sec. 5310. The jury, after hearing the case, must return a special verdict upon the issues submitted to them by the court, upon which the judgment of the court must be rendered, either admitting the will to probate or rejecting it. In either case, the proofs of the subscribing witnesses must be reduced to writing. If the will is admitted to probate, the judgment, will, and proofs must be recorded.

Verdict of the jury. Judgment.

Appeal.

Sec. 5311. If the will is contested, and the subscribing witnesses who are present in the county, and who are of sound mind, must be produced and examined; and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If none of the subscribing witnesses reside in the county at the time appointed for proving the will, the court may admit the testimony of other witnesses to prove the sanity of the testator and the execution of the will; and, as evidence of the execution, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or any of them.

Witnesses, who and how many to be examined.

Proof of handwriting.

Sec. 5312. The testimony of each witness, reduced to writing and signed by him, shall be good evidence in any subsequent contests concerning the validity of the will, or the sufficiency of the proof thereof, if the witness be dead, or has permanently removed from this Territory.

Testimony reduced to writing for future evidence.

Sec. 5313. If the court is satisfied, upon the proof taken or from the facts found by the jury, that the will was duly executed, and that the testator at the time of its execution was of sound and desposing mind, and not acting under duress, menace, fraud, or under influence, a certificate of the proof and the facts found, signed by the Probate Judge and attested by the seal of the court, must be attached to the will.

If proved, certificate to be attached.

Sec. 5314. The will and a certificate of the proof thereof, must be filed by the Clerk and recorded by him in a book to be provided for the purpose. All testimony shall be filed by the Clerk.

Will and proof to be filed and recorded.

Sec. 5315. Every will duly proved and allowed in any part of the United States, or in any foreign country or state, may be allowed and recorded in the Probate Court of any county in which the testator shall have left any estate.

Wills proved in other states to be recorded, when and where.

Sec. 5316. When a copy of the will and the probate thereof, duly authenticated, shall be produced, by the executor, or by any other person interested in the will with a petition for letters, the same must be filed, and the court or Judge must appoint a time for the hearing; notice whereof must be given as hereinbefore provided for an original petition for the probate of a will.

Proceedings on the production of a foreign will.

Sec. 5317. If, on the hearing, it appears upon the face of the record that the will has been proved, allowed and admitted to Probate in the United States, or in any foreign country, and that it was executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, or in conformity with the laws of this Territory, it must be admitted to probate, and have the same force and effect as a will first admitted to probate in this Territory, and letters testamentary or of administration issued thereon.

Hearing proofs of probate of foreign will.

Sec. 5318. When a will has been admitted to probate, any person interested may at any time within one year af-

The probate may be contested within one year.

ter such probate contest the same or the validity of the will. For that purpose he must file in the court in which the will was proved a petition in writing containing his allegations against the validity of the will or against the sufficiency of the proof, and praying that the probate may be revoked.

Citation to be issued to parties interested.

SEC. 5319. Upon filing the petition a citation must be issued to the executors of the will or to the administrators with the will annexed, and to all the legatees and devisees mentioned in the will and heirs residing in the Territory so far, as known to the petitioners; or to their guardians, if any of them are minors, or to their personal representatives, if any of them are dead, requiring them to appear before the court on some day of a regular term therein specified, to show cause why the probate of the will should not be revoked.

The hearing had on proof of service.

SEC. 5320. At the time appointed for showing cause or at any time to which the hearing is postponed, personal service of the citations having been made upon any persons named therein, the court must proceed to try the issues of fact joined in the same manner as in an original contest of a will.

Petitions to revoke probate of will tried by jury or court.

SEC. 5321. In all cases of petitions to revoke the probate of a will, wherein the original probate was granted without a contest, on written demand of either party, filed three days prior to the hearing, a trial by jury must be had, as in cases or the contest of an original petition to admit a will to probate. If, upon hearing the proofs of the parties, the jury shall find, or, if no jury is had, the court shall decide, that the will is for any reason invalid; or that it is not sufficiently proved to be the last will of the testator, the probate must be annulled and revoked.

Judgment, what.

On revocation of probate, powers of executor, etc., cease, but not liable for acts in good faith.

SEC. 5322. Upon the revocation being made, the powers of the executor or administrator with the will annexed, must cease; but such executor or administrator shall not be liable for any act done in good faith previous to the revocation.

Costs and expenses, by whom paid.

SEC. 5323. The fees and expenses must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs must be paid by the party who resisted the revocation, or out of the property of the decedent, as the court directs.

Probate, when conclusive. One year after removal of disability given to infants and others.

SEC. 5324. If no person, within one year after the probate of a will, contests the same, or the validity thereof, the probate of the will is conclusive; saving to infants and persons of unsound mind, a like period of one year after their respective disabilities are removed.

Proof of lost or destroyed will to be taken

SEC. 5325. Whenever any will is lost or destroyed the Probate Court must take proof of the execution and validity thereof, and establish the same, notice to all persons interested being first given, as prescribed in regard to proofs of wills in other cases. All the testimony given must be reduced to writing, and signed by the witnesses.

Must have been in existence at time of death

SEC. 5326. No will shall be proved as a lost or destroyed will, unless the same is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently destroyed in the lifetime of the testator, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

SEC. 5327. When a lost will is established, the provisions thereof must be distinctly stated and certified by the Probate Judge under his hand and the seal of his court, and the certificate, together with the testimony upon which it is founded, must be filed and recorded as other wills are filed and recorded, and letters testamentary or of administration with the will annexed, must be issued thereon, in the same manner as upon wills produced and duly proved.

To be certified, recorded, and letters therein granted.

SEC. 5328. If before or during the pendency of an application to prove a lost or destroyed will, letters of administration are granted on the estate of the testator, or letters testamentary of any previous will of the testator are granted, the court may restrain the administrators or executors so appointed, from any acts or proceedings which would be injurious to the legatees or devisees claiming under the lost or destroyed will.

Courts to restrain injurious acts of executors, or administrators during proceedings to prove lost will.

SEC. 5329. Nuncupative wills may at any time within six months after the testamentary words are spoken by the decedent, be admitted to probate on petition and notice as provided for the probate of written wills. The petition in addition to the jurisdictional facts, must allege that the testamentary words, or the substance thereof, were reduced to writing within thirty days after they were spoken, which writing must accompany the petition.

Nuncupative wills, when and how admitted to probate.

SEC. 5330. The Probate Court must not receive or entertain a petition for the probate of a nuncupative will, until the lapse of fourteen days from the death of the testator, nor must such petition at any time be acted on until the testamentary words are, or their substance is, reduced to writing and filed with the petition, nor until the surviving husband or wife (if any), and all other persons resident in the Territory, interested in the estate, are notified as hereinbefore provided.

Additional requirements in probate of nuncupative wills.

SEC. 5331. Contests of the probate of nuncupative wills and appointments of executors and administrators of the estate devised thereby must be had, conducted and made as hereinbefore provided in cases of the probate of written wills.

Contests and appointments to conform to provisions as to other wills.

CHAPTER III.

OF EXECUTORS AND ADMINISTRATORS, THEIR LETTERS, REMOVALS AND SUSPENSIONS.

SECTION
5340. To whom letters on proved will to issue.
5341. Who are incompetent as executors or administrators. Letters with will annexed to issue, when.
5342. Interested parties may file objections.
5343. Unmarried woman, executrix or administratrix, marrying, her authority ceases. Married woman named may be executrix, but not administratrix.
5344. Executor of an executor.
5345. Letters of administration *durante minore ætate*.
5346. Acts of a portion of executors valid.
5347. Authority of administrators with will annexed. Letters, how issued.
5348. Form of letters testamentary.
5349. Form of letters of administration with the will annexed.
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To whom letters on proved will to issue.

SECTION 5340. The court admitting a will to probate, after the same is proved and allowed, must issue letters thereon to the persons named therein as executors, who are competent to discharge the trust, who must appear and qualify, unless objection is made, as hereinafter provided.

Who are incompetent as executors, or administrators.

SEC. 5341. No person is competent to serve as executor who, at the time the will is admitted to probate, is:

1. Under the age of majority;
2. Convicted of an infamous crime;

3. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

If the sole executor or all the executors are incompetent, or renounce or fail to apply for letters, or to appear and qualify, letters of administration with the will annexed must be issued.

Letters with will annexed to issue, when.

SEC. 5342. Any person interested in a will may file objections in writing, to granting letters testamentary to the persons named as executors, or any of them; and the objections must be heard and determined by the court. A petition may, at the same time, be filed for letters of administration, with the will annexed.

Interested parties may file objections.

SEC. 5343. When an unmarried woman, appointed as executrix, marries, her authority is extinguished. When a married woman is named as executrix she may be appointed and serve in every respect as a *feme sole.*

Unmarried woman.

Married woman.

SEC. 5344. No executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will, letters of administration with the will annexed, of the estate of the first testator, left unadministered, must be issued.

Executor of an executor.

SEC. 5345. Where a person absent from the Territory, or a minor is named executor—if there is another executor who accepts the trust and qualifies—the latter may have letters testamentary and administer the estate until the return of the absentee or the majority of the minor, who may then be admitted as joint executor. If there is no other executor, letters of administration with the will annexed, must be granted; but the court may, in its discretion, revoke them on the return of the absent executor or the arrival of the minor at the age of majority.

Letters of administration *durante minore altate.*

SEC. 5346. When all the executors named are not appointed by the court, those appointed have the same authority to perform all acts and discharge the trust, required by the will, as effectually for every purpose as if all were appointed and should act together; where there are two executors or administrators, the act of one alone shall be effectual, if the other is absent from the Territory or laboring under any legal disability from serving, or if he has given his co-executor or co-administrator authority, in writing to act for both; and where there are more than two executors or administrators, the act of a majority is valid.

Acts of a portion of executors valid.

SEC. 5347. Administrators with the will annexed have the same authority over the estates which executors named in the will would have, and their acts are as effectual for all purposes. Their letters must be signed by the Clerk of the Court and bear the seal thereof.

Authority of administrators with will annexed.

Letters, how issued.

SEC. 5348. Letters testamentary must be substantially in the following form:

Form of letters testamentary.

"Territory of Idaho, county of ————. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Probate Court of the county of ————, C. D., who is named therein, is hereby appointed executor. Witness, G. H., Clerk of the Probate

Court of the county of ————, with the seal of the court affixed, the —— day of ————, A. D., 18—.

[Seal.]

By order of the court. G. H., Clerk."

Form of letters of administration with the will annexed.

SEC. 5349. Letters of administration, with the will annexed must be substantially in the following form:

"The Territory of Idaho, county of ————. The last will of A. B., deceased, a copy of which is hereto annexed, having been proved and recorded in the Probate Court of the county of ————, and there being no executor named in the will (or as the case may be,) C. D., is hereby appointed administrator with the will annexed. Witness, G. H., Clerk of the Probate Court of the county of ————, with the seal of the court affixed, the ——— day of ————, A. D., 18—.

[Seal.]

By order of the court. G. H., Clerk."

Form of letters of administration.

SEC. 5350. Letters of administration must be signed by the Clerk under the seal of the court, and substantially in the following form:

"Territory of Idaho, county of ————. C. D. is hereby appointed administrator of the estate of A. B. deceased.

[Seal.] Witness, G. H., Clerk of the Probate Court of the county of ————, with the seal thereof affixed, the ——— day of, ————, A. D., 18—.

By order of the court.

G. H., Clerk."

Order of persons entitled to administer.

SEC. 5351. Administration of the estate of a person dying intestate must be granted to some one or more of the persons hereinafter mentioned, and they are respectively entitled thereto in the following order:

1. The surviving husband or wife or some competent person whom he or she may request to have appointed;
2. The children;
3. The father or mother;
4. The brothers;
5. The sisters;
6. The grandchildren;
7. The next of kin entitled to share in the distribution of the estate;
8. Any of the kindred;
9. The public administrator;
10. The creditors;
11. Any person legally competent;

Partner not to administer.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of his estate.

Preference of person equally entitled.

SEC. 5352. Of several persons claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole to those of the half blood.

In discretion of court to appoint administrator, when.

SEC. 5353. When there are several persons equally entitled to the administration, the court may grant letters to one or more of them; and when a creditor is claiming letters the court may, in its discretion, at the request of another creditor grant letters to any other person legally competent.

When minor entitled, who appointed administrator.

SEC. 5354. If any person entitled to administration is a minor, letters must be granted to his or her guardian, or any other person entitled to letters of administration, in the discretion of the court.

Who are incompetent to act as administrators.

SEC. 5355. No person is competent to serve as administrator or administratrix who is:

1. Not a *bona fide* resident of the Territory;
2. Under the age of majority;
3. Convicted of an infamous crime;
4. Adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

Married woman not to be administratrix.

SEC. 5356. A married woman must not be appointed administratrix. When an unmarried woman appointed administratrix marries, her authority is extinguished.

Application, how made.

SEC. 5357. Petitions for letters of administration, must be in writing, signed by the applicant or his counsel and filed with the Clerk of the Court, stating the facts essential to give the court jurisdiction of the case, and when known to the applicant, he must state the names, ages, and residence of the heirs of the decedent, and the value and character of the property. If the jurisdictional facts existed, but are not fully set forth in the petition, the decree or order of administration and subsequent proceedings are not void on account of such want of jurisdictional averments.

When granted.

SEC. 5358. Letters of administration may be granted at a regular term of the court, or at a special term appointed by the judge for the hearing of the application.

Notice of application.

SEC. 5359. When a petition praying for letters of administration is filed, the Clerk must give notice thereof by causing notices to be posted in at least three public places in the county, one of which must be at the place where the court is held, containing the name of the decedent, the name of the applicant, and the time at which the application will be heard. Such notice must be given at least ten days before the hearing.

Contesting application.

SEC. 5360. Any person interested may contest the petition by filing written opposition thereto, on the ground of the incompetency of the applicant, or may assert his own rights to the administration and pray that letters be issued to himself. In the latter case the contestant must file a petition and give the notice required for an original petition, and the court must hear the two petitions together.

Hearing of application.

SEC. 5361. On the hearing, it being first proved that notice has been given as herein required, the court must hear the allegations and proofs of the parties, and order the issuing of letters of administration to the party best entitled thereto.

Evidence of notice.

SEC. 5362. An entry in the minutes of the court, that the required proof was made and notice given, shall be conclusive evidence of the fact of such notice.

Grant to any applicant.

SEC. 5363. Letters of administration must be granted to any applicant, though it appears that there are other persons having better rights to the administration, when such persons fail to appear and claim the issuing of letters to themselves.

What proofs must be made before granting letters of administration.

SEC. 5364. Before letters of administration are granted on the estate of any person who is represented to have died intestate, the fact of his dying intestate must be proved by the testimony of the applicant or others; and the court may also examine any other person concerning the time, place and manner of his death, the place of his residence at the time, the value and character of his property, and whether or not the decedent left any will, and may compel any person to attend as a witness for that purpose.

Letters may be granted to others than those entitled.

SEC. 5365. Administration may be granted to one or more competent persons, although not otherwise entitled to the same, at the written request of the person entitled, filed in the court. When the person entitled is a non-resident of the Territory, affidavits taken *ex parte* before any officer authorized by the laws of this Territory to take acknowledgments and administer oaths out of the Territory, may be received as primary evidence of the identity of the party, if free from suspicion, and the fact is established to the satisfaction of the court.

Revocation of letters of administration.

SEC. 5366. When letters of administration have been granted to any other person than the surviving husband or wife, child, father, mother, brother or sister of the intestate, any one of them who is competent, or any competent person at the written request of any of them, may obtain the revocation of the letters and be entitled to the administration by presenting to the court a petition praying the revocation and that letters of administration may be issued to him.

When petition filed, citation and notice.

SEC. 5367. When such petition is filed, the Clerk must in addition to the notice required on application for letters, issue a citation to the administrator to appear and answer the same at the time appointed for the hearing.

Hearing of petition for revocation.

SEC. 5368. At the time appointed, the citation having been duly served and returned, the court must proceed to hear the allegations and proofs of the parties, and if the right of the applicant is established and he is competent, letters of administration must be granted to him and the letters of the former administrator revoked.

Prior rights of relatives entitles them to revoke prior letters.

SEC. 5369. The surviving husband or wife, when letters of administration have been granted to a child, father, brother, or sister of the intestate; or any of such relatives, when letters have been granted to any other of them, may assert his prior right, and obtain letters of administration, and have the letters before granted revoked in the manner prescribed in the three preceding sections.

Administrator or executor to take oath.

SEC. 5370. Before letters testamentary or of administration are issued to the executor or administrator, he must take and subscribe an oath before some officer authorized to administer oaths, that he will perform, according to law, the duties of executor or administrator, which oath must be attached to the letters. All letters testamentary and of administration issued to, and all bonds executed by executors or administrators, with the affidavits and certificates thereon, must be forthwith recorded by the Clerk of the Court having jurisdiction of the estates, in books to be kept by him in his office for that purpose.

Letters and bond to be recorded.

Bond of administrator, form and requirements of.

SEC. 5371. Every person to whom letters testamentary or of administration are directed to issue, must, before receiving them, execute a bond to the Territory of Idaho, with two or more sufficient sureties, to be approved by the Probate Judge. In form, the bond must be joint and several, and the penalty must not be less than twice the value of the personal property, and twice the probable value of the annual rents, profits, and issues of the real property belonging to the estate, which values must be ascertained by the Probate Judge, by examining on oath the party applying, and any other persons.

Additional bonds, when required.

SEC. 5372. The Probate Judge must require an additional bond whenever the sale of any real estate belonging to an estate is ordered; but no such additional bond must be required when it satisfactorily appears to the court that the penalty of the bond given before receiving letters, or of any bond given in place thereof, is equal to twice the value of the personal property remaining in, or that will come into, the possession of the executor or administrator, including the annual rents, profits, and issues of real estate, and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

Conditions of bonds.

SEC. 5373. The bond must be conditioned that the executor or administrator shall faithfully execute the duties of the trust according to law.

Each or more than one administrator to give separate bonds.

SEC. 5374. When two or more persons are appointed executors or administrators, the Probate Judge must require and take a separate bond from each of them.

Recoveries had on same bond.

SEC. 5375. The bond shall not be void upon the first recovery, but may be sued and recovered upon from time to time, by any person aggrieved, in his own name, until the whole penalty is exhausted.

Bonds and justification of sureties on.

SEC. 5376. In all cases where bonds or undertakings are required to be given, under this Title, the sureties must justify thereon as required by this Code, and the certificate thereof must be attached to, and filed and recorded with the bond or undertaking. All such bonds and undertakings must be approved by the Probate Judge before being filed or recorded.

Must be approved.

Citation and requirements of judge on deficient bond.

SEC. 5377. Before the Probate Judge approves any bond required under this Title, he may of his own motion, or at any time after the approval of such bond, upon the motion of any person interested in the estate, supported by affidavit that any one or all of such sureties are not worth as much as they have justified to, order a citation to issue, requiring such sureties to appear before him, at a certain time and place, to testify touching their property and its value; and the Judge must, at the time such citation is issued, cause a notice to be issued to the executor or administrator, requiring his appearance at the return of the citation. Upon the return of the citation, the Judge may swear and examine the sureties, and such witnesses as may be produced, touching the property of such sureties and its value; and if, upon such investigation, the Judge is satisfied that the bond is insufficient, he may require sufficient additional security, within such time as may be reasonable, not less than five days.

Additional security.

Right ceases, when.

SEC. 5378. If sufficient security is not given within the time fixed by the Judge's order, the right of such executor or administrator to the administration shall cease, and the person next entitled to the administration on the estate, who will execute a sufficient bond, must be appointed to the administration.

When bond may be dispensed with.

SEC. 5379. When it is expressly provided in the will of a testator that no bond is required of the executor, letters testamentary may issue and sales of real estate be made and confirmed without any bond being given; but an executor to whom letters are issued without bond, may at any time afterward (when it appears from any cause necessary or proper), be required to file a bond as in other cases.

Petition showing failing sureties and asking for further bonds.

SEC. 5380. Any person interested in an estate may, by verified petition, represent to the Probate Judge that the sureties of the executor or administrator thereof have become or are becoming insolvent, or that they have removed or are about to remove from the Territory, or that from any other cause the bond is insufficient, and ask that further security be required.

Citation to executor, etc., to show cause against such application.

SEC. 5381. If the Probate Judge is satisfied that the matter requires investigation, a citation must be issued to the executor or administrator, requiring him to appear at a time and place to be therein specified, to show cause why he should not give further security. The citation must be served personally on the executor or administrator, at least five days before the return day. If he has absconded or cannot be found, it may be served by leaving a copy of it at his last place of residence or by such publication as the court or Judge may order.

Further security may be ordered.

SEC. 5382. On the return of the citation or at such other time as the Judge may appoint, he must proceed to hear the proofs and allegations of the parties. If it satisfactorily appears that the security is from any cause insufficient, he may make an order requiring the executor or administrator to give further security or to file a new bond in the usual form, within a reasonable time, not less than five days.

Neglecting to obey order.

SEC. 5383. If the executor or administrator neglects to comply with the order within the time prescribed, the Judge must, by order, revoke his letters, and his authority must thereupon cease.

Suspending powers of executor, etc.

SEC. 5384. When a petition is presented praying that an executor or administrator be required to give further security, or to give bond, where, by the terms of the will, no bond was originally required, and it is alleged on oath that the executor or administrator is wasting the property of the estate, the Judge may by order suspend his powers until the matter can be heard and determined.

Further security ordered without application of party in interest.

SEC. 5385. When it comes to his knowledge that the bond of any executor or administrator is, from any cause, insufficient, the Probate Judge, without any application, must cause him to be cited to appear and show cause why he should not give further security, and must proceed thereon as upon the application of any person interested.

Release of sureties.

SEC. 5386. When a surety of any executor or administrator desires to be released from responsibility on account of future acts, he may make application to the Probate Court or Judge for relief. The court or Judge must cause a citation to the executor or administrator to be issued, and served personally, requiring him to appear at a time and place to be therein specified, and to give other security. If he has absconded, left, or removed from the Territory, or if he cannot be found after due diligence and inquiry, service may be made as provided in section 5381.

SEC. 5387. If new sureties be given to the satisfaction of the Judge, he may thereupon make an order that the sureties who applied for relief shall not be liable on their bond for any subsequent act, default, or misconduct of the executor or administrator. New sureties.

SEC. 5388. If the executor or administrator neglects or refuses to give new sureties, to the satisfaction of the Judge, on the return of the citation, or within such reasonable time as the Judge shall allow, unless the surety making the application shall consent to a longer extension of time, the court or Judge must, by order, revoke his letters. Neglect to give new sureties forfeits letters.

SEC. 5389. The applications authorized by the nine preceding sections of this chapter may be heard and determined at any time. All orders made therein must be entered upon the minutes of the court. Applications to be determined out of term time.

SEC. 5390. When there is delay in granting letters testamentary or of administration, from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an administrator or executor dies, or is suspended or removed, the Probate Judge must appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate; or he may direct the Public Administrator of his county to take charge of the estate. Special administrator, when appointed.

SEC. 5391. The appointment may be made at any time, and without notice, and must be made by entry upon the minutes of the court, specifying the powers to be exercised by the administrator, upon such order being entered, and after the person appointed has given bond, the clerk must issue letters of administration to such person, in conformity with the order. Special letters may be issued out of term time.

SEC. 5392. In making the appointment of a special administrator, the Probate Judge must give preference to the person entitled to letters testamentary or of administration, but no appeal must be allowed from the appointment. Preference given to persons entitled to letters.

SEC. 5393. Before any letters issue to any special administrator, he must give bond in such sum as the Probate Judge may direct, with sureties to the satisfaction of the judge, conditioned for the faithful performance of his duties; and he must take the usual oath and have the same endorsed on his letters. Special administrator to give bond and take oath.

SEC. 5394. The special administrator must collect and preserve for the executor or administrator, all the goods, chattels, debts, and effects of the decedent, all incomes, rents, issues and profits, claims and demands of the estate; must take the charge and management of, enter upon and preserve from damage, waste, and injury, the real estate, and for any such and all necessary purposes, may commence and maintain, or defend, suits and other legal proceedings, as an administrator; he may sell such perishable property as the Probate Court may order to be sold, and exercise such other powers as are conferred upon him by his appointment, but in no case is he liable to an action by any creditor on a claim against the decedent. Duties of special administrator.

When letters testamentary or of administration are granted, special administrator's powers cease.

SEC. 5395. When letters testamentary or of administration on the estate of the decedent have been granted, the powers of the special administrator cease, and he must forthwith deliver to the executor or administrator, all the property and effects of the decedent in his hands; and the executor or administrator may prosecute to final judgment any suit commenced by the special administrator.

Special administrator to render account.

SEC. 5396. The special administrator must render an account on oath, of his proceedings, in like manner as other administrators are required to do.

On proof of will, after grant of letters of administration, letters revoked.

SEC. 5397. If, after granting letters of administration on the ground of intestacy, a will of the decedent is duly proved and allowed by the court, the letters of administration must be revoked, and the power of the administrator ceases, and he must render an account of his administration within such time as the court shall direct.

Power of executor in such a case.

SEC. 5398. In such case, the executor or the administrator, with the will annexed, is entitled to demand, sue for, recover, and collect all the rights, goods, chattels, debts, and effects of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the administrator before the revocation of his letters of administration.

Remaining administrator or executor to continue when his colleagues are disqualified.

SEC. 5399. In case any one of several executors or administrators, to whom letters are granted, dies, becomes lunatic, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust; or in case the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator must proceed to complete the execution of the will or administration.

Who to act when all acting are incompetent.

SEC. 5400. If all such executors or administrators die or become incapable, or the power and authority of all of them is revoked, the Probate Court must issue letters of administration with the will annexed, or otherwise, to the widow, or next of kin, or others, in the same order and manner as is directed in relation to original letters of administration. The administrators so appointed must give bond in the like penalty, with like sureties and conditions, as hereinbefore required of administrators, and shall have the like power and authority.

Executor or administrator may resign, when.

SEC. 5401. Any executor or administrator may, at any time, by writing, filed in the Probate Court, resign his appointment, having first settled his accounts and delivered up all the estate to the person whom the court shall appoint to receive the same. If, however, by reason of any delays in such settlement and delivering up of the estate, or for any other cause, the circumstances of the estate or the rights of those interested therein require it, the court may, at any time before settlement of accounts and delivering up of the estate is completed, revoke the letters of such executor or administrator, and appoint in his stead an administrator, either special or general, in the same manner as is directed in relation to original letters of administration.

Court to appoint successor.

The liability of the outgoing executor or administrator, or of the sureties on his bond, shall not be in any manner discharged, released, or affected, by such appointment or resignation.

Liability of outgoer.

SEC. 5402. All acts of an executor or administrator, as such, before the revocation of his letters testamentary or of administration, are as valid, to all intents and purposes, as if such executor or administrator had continued lawfully to execute the duties of his trust.

Acts of executor, etc , valid until his power is revoked.

SEC. 5403. A transcript from the minutes of the court, showing the appointment of any person as executor or administrator, together with the certificate of the Clerk under his hand and the seal of his court, that such person has given bond and been qualified, and that letters testamentary or of administration have been issued to him and have not been revoked, shall have the same effect in evidence as the letters themselves.

Transcript of court. Minutes to be evidence.

SEC. 5404 No Probate Court shall admit to probate any will, or grant letters testamentary or of administration, in any case where the Judge thereof is interested as next of kin to the decedent, or as a legatee or devisee under the will, or when he is named as executor or trustee in the will, or is a witness thereto, or is in any other manner interested or disqualified from acting.

When Judge not to act.

SEC. 5405. When a petition is filed in the Probate Court praying for admission to the probate of a will, or for granting letters testamentary or of administration, or when proceedings are pending in the Probate Court for the settlement of an estate, and the presiding Judge of the Court is disqualified to act from any cause, upon his own or the motion of any person interested in the estate, he must make an order transferring the proceeding to the Probate Court of an adjoining county; and the Clerk of the Court ordering the transfer must transmit to the Clerk of the Court to which the proceeding is ordered to be transferred, a certified copy of the order and all the papers on file in his office in the proceeding; and thereafter the Probate Court to which the proceeding is transferred shall exercise the same authority and jurisdiction over the estate, and all matters relating to the administration thereof, as if it had original jurisdiction of the estate.

Judge being disqualified, proceedings to be transferred and where.

SEC. 5406. The transfer of a proceeding from one court to another, as provided for in the preceding section, shall not affect the right of any person to letters testamentary or of administration on the estate transferred, but the same persons are entitled to letters testamentary or of administration on the estate in the order hereinbefore provided. If before the administration is closed of any estate so transferred as herein provided, another person is elected or appointed, and qualified as Probate Judge of the county wherein such proceeding was originally commenced, who is not disqualified to act in the settlement of the estate, and the causes for which the proceeding was transferred no longer exist, any person interested in the estate may have the proceeding returned to the court from which it was originally transferred by filing a petition setting forth these facts and moving the court therefor.

Transfer not to change right to administer.

Re-transfer, how made.

SEC. 5407. On hearing the motion, if the facts required by the preceding section to be set out in the petition are satisfactorily shown, and it further appears to the court that the convenience of parties interested would be promoted by such change, the Judge must make an order transferring

When proceedings to be returned to original court.

the proceeding back to the Probate Court where it was originally commenced; and the Clerk of the Court ordering the transfer must transmit to the Clerk of the Court in which the proceeding was originally commenced, a certified copy of the order and all the original papers on file in his office in the proceeding; and the court where the proceeding was originally commenced shall thereafter have jurisdiction and power to make all necessary orders and decrees to close up the administration of the estate.

Suspension of powers of executor.

SEC. 5408. Whenever the Probate Judge has reason to believe, from his own knowledge or from credible information that any executor or administrator has wasted, embezzled, or mismanaged, or is about to waste or embezzle the property of the estate committed to his charge, or has committed or is about to commit, a fraud upon the estate, or is incompetent to act, or has permanently removed from the Territory, or has wrongfully neglected the estate or has long neglected to perform any act as such execurtor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator until the matter is investigated.

Executor to have notice of his suspension, and to be cited to appear.

SEC. 5409. When such suspension is made, notice thereof must be given to the executor or administrator, and he must be cited to appear and show cause why his letters should not be revoked. If he fail to appear in obedience to the citation, or, if appearing, the court is satisfied that there exists cause for his removal, his letters must be revoked and letters of administration granted anew as the case may require.

Any party interested may appear on hearing.

SEC. 5410. At the hearing, any person interested in the estate may appear and file his allegation in writing, showing that the executor or administrator should be removed; to which the executor or administrator may demur or answer, as hereinbefore provided. The issues raised must be heard and determined by the court.

Notice to absconding executors and administrators.

SEC. 5411. If the executor or administrator has absconded or conceals himself, or has removed or absented himself from the Territory, notice may be given him of the pendency of the proceedings by publication in such manner as the court may direct, and the court may proceed upon such notice as if the citation had been personally served.

May compel attendance.

SEC. 5412. In the proceedings authorized by the preceding sections for the removal of an executor or administrator, the court may compel his attendance by attachment and may compel him to answer questions, on oath, touching his administration, and, upon his refusal so to do, may commit him until he obey, or may revoke his letters, or both.

CHAPTER IV.

OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEDENTS.

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5420. Inventory to be returned, including the homestead.
5421. Appraisement, and pay of appraisers.
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5434. Persons entrusted with estate of decedent may be cited to account.

Inventory to be returned including homestead.

SECTION 5420. Every executor or administrator must make and return to the court, at its first term after his appointment, a true inventory and appraisement of all the estate of the decedent, including the homestead, if any, which has come to his possession or knowledge.

Appraisement and pay of appraisers.

SEC. 5421. To make the appraisement, the Probate Judge or Court must appoint three disinterested persons (any two of whom may act), who are entitled to receive a reasonable compensation for their services, not to exceed four dollars per day, to be allowed by the court or Judge. The appraisers must, with the inventory, file a verified account of their services and disbursements. If any part of the estate is in any other county than that in which letters issued, appraisers thereof may be appointed, either by the Probate Judge, having jurisdiction of the estate, or by the Probate Judge of such other county, on request of the Judge having jurisdiction.

Oath of appraisers and inventory, how made.

SEC. 5422. Before proceeding to the execution of their duty, the appraisers, before any officer authorized to administer oaths, must take and subscribe an oath, to be attached to the inventory, that they will truly, honestly, and impartially appraise the property exhibited to them, or which shall come to their knowledge, according to the best of their knowledge and ability. They must then proceed to estimate and appraise the property; each article must be set down separately, with the value thereof in dollars and cents, in figures, opposite to the articles respectively; the inventory must contain all the estate of the decedent, real and personal, a statement of all debts, partnerships, and other interests, bonds, mortgages, notes, and other securities for the payment of money belonging to the decedent, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon (if any), with their dates, and the sum which, in the judgment of the appraiser, may be collected on each debt, interest, or security; the inventory must show, so far as the same can be ascertained by the executor or the administrator, what portion of the property is community property and what portion is the separate property of the decedent.

Inventory to account for moneys. If all money no appraisment necessary.

SEC. 5423. The inventory must also contain an account of all moneys belonging to the decedent which have come to the hands of the executor or administrator, and if none, the fact must be so stated in the inventory. If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned as in other cases.

Effect of naming a debtor executor.

SEC. 5424. The naming of a person as executor does not thereby discharge him from any just claim which the testator has against him, but the claims must be included in the inventory, and the executor is liable for the same, as for so much money in his hands, when the debt or demand becomes due.

Discharge or bequest of debt against executor

SEC. 5425. The discharge or bequest in a will, of any debt or demand of the testator against the executor named, or any other person, is not valid against the creditors of the decedent, but is a specific bequest of the demand or debt. It must be included in the inventory, and, if necessary, applied in the payment of the debts. If not necessary for that purpose, it must be paid in the same manner and proportion as other specific legacies.

To make oath to inventory.

SEC. 5426. The inventory must be signed by the appraisers, and the executor or administrator must take and subscribe an oath before an officer authorized to administer oaths, that the inventory contains a true statement of all the estate of the decedent which has come to his knowledge or possession, and particularly of all money belonging to the decedent, and of all just claims of the decedent against the affiant. The oath must be indorsed upon or annexed to the inventory.

Letters may be revoked for neglect of administrator.

SEC. 5427. If an executor or administrator neglects or refuses to return the inventory within the time prescribed, or within such further time, not exceeding two months, which the court or Judge shall, for reasonable cause, allow, the court may, upon notice revoke the letters testamentary or of administration, and the executor or administrator is liable on his bond for any injury to the estate, or any person interested therein, arising from such failure.

Inventory of after discovered property.

SEC. 5428. Whenever property of more than two hundred and fifty dollars in value, not mentioned in an inventory that is made and filed, comes to the possession or knowledge of an executor or administrator, he must cause the same to be appraised in the manner prescribed in this chapter, and an inventory thereof to be returned within two months after the discovery; and the making of such inventory may be enforced after notice, by attachment or removal from office.

Administrator and executor to possess real and personal estate.

SEC. 5429. The executor or administrator is entitled to the possession of all the real and personal estate of the decedent, and to receive the rents and profits of the real estate, until the estate is settled, or until delivered over by order of the Probate Court to the heirs or devisees; and must keep in good tenantable repair all houses, buildings, and fixtures thereon, which are under his control. The heirs or devisees may themselves, or jointly with the executor or administrator, maintain an action for the possession of the real estate or for the purpose of quieting title to the same, against any one except the executor or administrator; but this section shall not be construed as requiring them so to do.

Executor or administrator to deliver real estate to heirs, etc., at end of ten months, unless debts are to be satisfied.

SEC. 5430. Unless it satisfactorily appears to the Probate Court, that the rents, issues and profits of the real estate for a longer period, are necessary to be received by the executor or administrator, wherewith to pay the debts of the decedent, or that it will probably be necessary to sell the real estate for the payment of such debts, at the end of the time limited for the presentation of claims against the estate, the court must direct the executor or administrator to deliver possession of all the real estate to the heirs at law or devisees.

Embezzling estate before grant of letters testamentary.

SEC. 5431. If any person before the granting of letters testamentary or of administration, embezzles or alienates any of the moneys, goods, chattels or effects of a decedent, he is chargeable therewith and liable to an action by the executor or administrator of the estate for double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Citation to person suspected to have embezzled estate, etc.

SEC. 5432. If any executor, administrator or other person interested in the estate of a decedent, complains to the Probate Judge on oath, that any person is suspected to have concealed, embezzled, smuggled, conveyed away or disposed of any moneys, goods or chattels of the decedent, or has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings which contain evidences of, or tend to disclose the right, title, interest or claim of the decedent to any real or personal estate, or any claim or demand, or any last will, the Judge may cite such person to appear before the Probate Court, and may examine him on oath upon the matter of such complaint. If such person is not in the county where letters have been granted, he may be cited and examined, either before the Probate Court of the county where he is found, or before the court issuing the citation. But if in the latter case he appears and is found innocent, his necessary expenses must be allowed him out of the estate.

Refusal to obey citation, penalty for and for embezzlement.

SEC. 5433. If the person so cited refuses to appear and submit to an examination, or to answer such interrogatories as may be put to him, touching the matters of the complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court, or is discharged according to law. If upon such examination it appears that he has concealed, embezzled, smuggled, conveyed away or disposed of any moneys, goods or chattels of the decedent, or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts or other writings tending to disclose the right, title, interest or claim of the decedent to any real or personal estate, claim or demand, or any last will of the decedent, the Probate Court may make an order requiring such person to disclose his knowledge thereof to the executor or administrator, and may commit him to the county jail there to remain until the order is complied with or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and be filed in the Probate Court. The order for such disclosure made upon such examination, is primary

May be compelled to disclose by imprisonment.

Liable for double damages.

evidence of the right of such administrator to such property in any action brought for the recovery thereof; and any judgment recovered therein must be for double the value of the property as assessed by the court or jury, or for return of the property, and damages in addition thereto, equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side.

Persons entrusted with estate may be cited to account.

SEC. 5434. The Probate Judge, upon the complaint, on oath, of any executor or administrator, may cite any person who has been entrusted with any part of the estate of the decedent, to appear before such court, and require him to render a full account, on oath, of any moneys, goods, chattels, bonds, accounts, or other property or papers belonging to the estate, which have come to his possession in trust for the executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear and render such account, the court may proceed against him as provided in the preceding section.

CHAPTER V.

OF THE PROVISION FOR THE SUPPORT OF THE FAMILY, AND OF THE HOMESTEAD.

SECTION
5440. Widow and minor children may remain in decedent's house, etc.
5441. All property exempt from execution to be set apart for use of family.
5442. May make extra allowance.
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5444. Property set apart, how apportioned between widow and children.
5445. Estates less than fifteen hundred dollars to go to wife and child, or to be summarily administered.
5446. When all property to go to children.
5447. Rights of survivor to homestead.
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SECTION
5449. Appraisers to carve out of the original exceeding five thousand dollars in value, a homestead, and report the same.
5450. Report of the appraisers. Majority and minority, which may be confirmed.
5451. Day to be set for confirming or rejecting the report of the appraisers. Appeal.
5452. Costs, to whom chargeable. Persons succeeding to rights of homestead owners have all their powers and rights.
5453. Certified copies of certain orders to be recorded.

Widow and minor children may remain in decedent's house, etc.

SECTION 5440. When a person dies leaving a widow or minor children, the widow or children, until letters are granted and the inventory is returned, are entitled to remain in possession of the homestead, of all the wearing apparel of the family, and of all the household furniture of the decedent, and are also entitled to a reasonable provision for their support, to be allowed by the Probate Judge.

All property exempt from execution to be set apart for family.

SEC. 5441. Upon the return of the inventory, or at any subsequent time during the administration, the court or the Probate Judge may, on his own motion or on petition therefor, set apart for the use of the surviving husband or wife, or the minor children of the decedent, all property exempt from execution, including the homestead selected, designated, and recorded. If none has been selected, designated and recorded, the Judge or the court must select, designate, set apart, and cause to be recorded, a homestead for the use of the persons hereinbefore named in the manner provided in this chapter, out of the real estate belonging to the decedent.

May make extra allowance.

SEC. 5442. If the amount set apart be insufficient for the support of the widow and children, or either, the Probate Court or Judge must make such reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate; which, in case of an insolvent estate, must not be longer than one year after granting letters testamentary or of administration.

Payment of allowances.

SEC. 5443. Any allowance made by the court or Judge, in accordance with the provisions of this chapter, must be paid in preference to all other charges except funeral charges and expenses of administration: and any such allowance, whenever made, may, in the discretion of the court or Judge, take effect from the death of the decedent.

Property set apart, how apportioned between survivors and children.

SEC. 5444. When property is set apart to the use of the family, in accordance with the provisions of this chapter, if the decedent left a widow or surviving husband, and no minor child, such property is the property of the widow or surviving husband. If the decedent left also a minor child or children, the one-half of such property shall belong to the widow or surviving husband, and the remainder to the child, or in equal shares to the children, if there be more than one. If there be no widow or surviving husband, the whole belongs to the minor child or children. If the property set apart be a homestead, selected from the separate property of the deceased, the court can only set it apart for a limited period, to be designated in the order, and the title vests in the heirs of the deceased, subject to such order.

Estates less than fifteen hundred dollars to go to wife and child, or to be summarily administered.

SEC. 5445. If, upon the return of the inventory of the estate of a deceased person, it shall appear therefrom that the value of the whole estate does not exceed the sum of fifteen hundred dollars, and if there be a widow or minor children of the deceased, the court or a judge thereof shall, by order, require all persons interested to appear on a day fixed, to show cause why the whole of said estate should not be assigned for the use and support of the family of the deceased. Notice thereof shall be given and proceedings had in the same manner as upon the settlement of accounts of executors and administrators. If, upon the hearing, the court finds that the value of the estate does not exceed the sum of fifteen hundred dollars, it shall, by a decree for that purpose, assign for the use and support of the widow and minor children, if there be a widow and minor children, and if no widow, then for the children, if there be any, and if no children, then for the widow, the whole of the estate, after the payment of the expenses of the last illness of the deceased, funeral charges and expenses of administration, and there must be no further proceedings in the administration, unless further estate be discovered; and when it so appears that the value of the whole estate does not exceed the sum of fifteen hundred dollars, it is in the discretion of the Probate Court to dispense with the regular proceedings, or any part thereof, prescribed in this Title, and there must be had a summary administration of the estate, and an order of distribution thereof at the end of six months after the issuing of letters; the notice to creditors must be given to present their claims within four months after the first publication of such notice, and those not so presented, are barred as in other cases.

When all property to go to children.

SEC. 5446. If the widow has a maintenance derived from her own property equal to the portion set apart to her by the preceding sections of this chapter, the whole property so set apart, other than her half of the homestead, must go to the minor children.

Rights of survivor to homestead.

SEC. 5447. If the homestead selected by the husband and wife or either of them, during their coverture, and recorded while both were living, was selected from the community property, or from the separate property of the person selecting or joining in the selection of the same, it vests, on the death of the husband or wife, absolutely in the survivor. If the homestead was selected from the separate property of either the husband or the wife, without his or her consent, it vests, on the death of the person from whose property it was selected, in his or her heirs, subject to the power of the Probate Court to assign it for a limited period, to the family of the decedent. In either case it is not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them previous to or at the time of the death of such husband or wife, except in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record and which constitute liens upon the premises;

2. On debts secured by mechanics', laborers' or venders' liens upon premises;

3. On debts secured by mortgages on the premises, executed and acknowledged for any portion of the purchase price thereof, or by the husband and wife, or by an unmarried claimant;

4. On debts secured by mortgages on the premises executed and recorded before the declaration of homestead was filed for record.

Selected and recorded homestead set off to persons entitled.

SEC. 5448. If the homestead selected and recorded prior to the death of the decedent is returned in the inventory, appraised at not exceeding five thousand dollars in value, the Probate Court must, by order, set it off to the persons in whom title is vested by the preceding section. If there are subsisting liens or incumbrances on the homestead, they must be paid out of the funds of the estate, if there remain sufficient for that purpose, after the payment of all claims allowed against the estate.

Subsisting liens to be paid by solvent estate.

Appraisers in case homestead worth over five thousand dollars.

SEC. 5449. If the homestead, as selected and recorded, be appraised at more than five thousand dollars, the appraisers must, before they make their return, determine whether the premises can be divided without material injury, and if they find that they can be thus divided, they must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling house, as will amount in the value to the sum of five thousand dollars, and make report thereof, giving the metes, bounds and full description of the portion set apart as a homestead. If the appraisers find that the premises exceeded in value, at the time of their selection, the sum of five thousand dollars, and that they cannot be divided without material injury, they must report such finding, and thereafter the court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.

Report of appraisers.

SEC. 5450. Any two of the appraisers concurring, may discharge the duties imposed upon the three, and make the report. A dissenting report may be made by the third appraiser. The report must state fully the acts of the appraisers. Both reports may be heard and considered by the court in determining a confirmation or rejection of the majority report, but the minority report must in no case be confirmed.

Day for confirming or rejecting report of appraisers.

SEC. 5451. When the report of the appraisers is filed, the court must set a day for hearing any objections thereto, from any one interested in the estate. Notice of the hearing must be given for such time and in such manner as the court may direct. If the court be satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the court may appoint new appraisers to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of their report as upon the first report.

Costs, to whom chargable.

SEC. 5452. The costs of all proceedings in the Probate Court provided for in this chapter, must be paid by the estate as expenses of administration. Persons succeeding by purchase, or otherwise, to the interests, rights and title of successors to homesteads, or to the right to have homesteads set apart to them as in this chapter provided, have all the rights and benefits conferred by law on the persons whose interests and rights they acquire.

Certified copies of certain orders to be recorded.

SEC. 5453. A certified copy of every final order made in pursuance of this chapter, by which a report is confirmed, property assigned or sale confirmed, must be recorded in the office of the Recorder of the county where the homestead property is situated.

CHAPTER VI.

OF CLAIMS AGAINST THE ESTATE.

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5462. Copy and proof of notice to be filed and order made.
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5480. Claims of executor, etc., against estate.
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5482. Executor to return statement of claims.
5483. Payment of interest on claims.

Notice to creditors.

SECTION 5460. Every executor or administrator must, immediately after his appointment, cause to be published in some newspaper of the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the decedent, requiring all persons having claims against him to exhibit them with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice. Such notice must be published as often as the Judge or court shall direct, but not less than once a week for four weeks. The court or Judge may also direct additional notice by publication or posting. In case such executor or administrator resigns, or is removed, before the time expressed in the notice, his successor must give notice only for the unexpired time allowed for such presentation; *Provided*, That when no newspaper is published in the county, the notice shall be posted in not less than three public places in the county, one of which shall be at the court house door, for such time, not less than four weeks, as the court may order.

Additional notice.

Time expressed in the notice.

SEC. 5461. The time expressed in the notice must be ten months after its first publication, when the estate exceeds in value the sum of fifteen hundred dollars, and four months when it does not.

Copy and proof of notice to be filed and order made.

SEC. 5462. After the notice is given, as required in the preceding section, a copy thereof, with the affidavit of due publication or of publication and posting must be filed and upon such affidavit or other testimony to the satisfaction of the court, an order or decree showing that due notice to creditors has been given, and directing that such order or decree be entered in the minutes and recorded, must be made by the court.

Time within which claims must be presented.

SEC. 5463. All claims arising upon contracts, whether the same be due, not due or contingent, must be presented within the time limited in the notice, and any claim not so presented is barred forever; *Provided, however*, That when it is made to appear by the affidavit of the claimant, to the satisfaction of the court or a Judge thereof that the claimant had no notice as provided in this chapter, by reason of being out of the Territory, it may be presented at any time before a decree of distribution is entered.

Claims to be sworn to, and when allowed, to bear same interests as judgments.

SEC. 5464. Every claim which is due, when presented to the executor or administrator, must be supported by the affidavit of the claimant, or some one in his behalf, that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant. If the claim be not due when presented, or be contingent, the particulars of such claim must be stated. When the affidavit is made by a person other than the claimant, he must set forth in the affidavit the reason why it is not made by the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers or proofs to be produced in support of the claim. If the estate be insolvent, no greater rate of interest shall be allowed upon any claim after the first publication of notice to creditors than is allowed on judgments obtained in the District Court.

Probate judge may present claim, and action thereon.

SEC. 5465. Any Probate Judge may present a claim against the estate of a decedent, for allowance, to the executor or administrator thereof; and if the executor or administrator allows the claim, he must, in writing, designate some Probate Judge of an adjoining county, who, upon the presentation of such claim to him, is vested with the same power to allow or reject it as he would have if the will had been proved or administration granted in his own county; and the Probate Judge presenting such claim, in case of its rejection by the executor or administrator, or by such Probate Judge as shall have acted upon it, has the same right to sue in a proper court for its recovery as other persons have when their claims against an estate are rejected.

Allowance and rejection of claims.

SEC. 5466. When a claim, accompanied by the affidavit required in this chapter, is presented to the executor or administrator, he must indorse thereon his allowance or rejection, with the day and date thereof. If he allows the claim, it must be presented to the Probate Judge for his approval, who must, in the same manner, indorse upon it his allowance or rejection. If the executor or administrator, or the Judge, refuse or neglect to indorse such allowance or rejection for ten days after the claim has been presented to him, such refusal or neglect is equivalent to a rejection; and if the presentation be made by a Notary, the certificate of such Notary, under seal, is primary evidence of such presentation and rejection. If the claim be presented to the executor or administrator, before the expiration of the time limited for the presentation of claims, the same is presented in time, though acted upon by the executor or administrator, and by the Judge, after the expiration of such time.

Approved claims, or copies to be filed.

SEC. 5467. Every claim allowed by the executor or administrator, and approved by the Probate Judge on a copy thereof, as hereinafter provided, must, within thirty days thereafter, be filed in the Probate Court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration. If the claim is founded on a bond, bill, note, or any other instrument, a copy of such instrument must accompany the claim, and the original instrument must be exhibited if demanded, unless it is lost or destroyed, in which case the claimant must accompany his claim by his affidavit, containing a copy or particular description of such instrument, and stating its loss or destruction. If the claim or any part thereof is secured by a mortgage or other lien which has been recorded in the office of the Recorder of the county in which the land affected by it lies, it is sufficient to describe the mortgage on lien, and refer to the date, volume, and page of its record. If, in any case, the claimant has left any original voucher in the hands of the executor or administrator, or suffered the same to be filed in court, he may withdraw the same when a copy thereof has been already, or is then, attached to his claim. A brief description of every claim filed must be entered by the clerk in the register, showing the name of the claimant, the amount and character of the claim, rate of interest, and date of allowance.

Claims secured by lien may be described.

Lost claims.

Rejected claims, sued for within three months.

SEC. 5468. When a claim is rejected, either by the executor or administrator, or the Probate Judge, the holder must bring suit in the proper court against the executor or administrator, within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim is forever barred.

Claims barred by statute of limitations.

SEC. 5469. No claim must be allowed by the executor or administrator, or by the Probate Judge, which was barred by the statute of limitations, at the time of the death of the decedent. When a claim is presented to the Probate Judge for his allowance, he may, in his discretion, examine the applicant and others, on oath, and hear any other legal evidence touching the validity of the claim.

Claims must be presented before suit.

SEC. 5470. No holder of any claim against an estate shall maintain any action thereon unless the claim is first presented to the executor or administrator except, in the following case: An action may be brought by any holder of a mortgage or lien to enforce the same against the property of the estate subject thereto, where all recourse against any other property of the estate is expressly waived in the complaint.

Time of limitation.

SEC. 5471. The time during which there shall be a vacancy in the administration, must not be included in any limitations herein prescribed.

Claims in action pending at time of decease.

SEC. 5472. If an action is pending against the decedent at the time of his death, the plaintiff must in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentations required.

Allowance of claim in part.

SEC. 5473. Whenever any claim is presented to an executor or administrator, or to the Probate Judge, and he is willing to allow the same in part, he must state in his indorsement the amount he is willing to allow. If the creditor refuse to accept the amount allowed in satisfaction of his claim, he shall recover no costs in any action therefor, brought against the executor or administrator, unless he recovers a greater amount than that offered to be allowed.

Effect of judgment against executor.

SEC. 5474. A judgment rendered against an executor or administrator upon any claim for money against the estate of his testator or intestate, only establishes the claim in the same manner, as if it had been allowed by the executor or administrator and the Probate Judge, and the judgment must be that the executor or administrator pay in due course of administration the amount ascertained to be due. A certified transcript of the judgment must be filed in the Probate Court. No execution must issue upon such judgment, nor shall it create any lien upon the property of the estate or give to the judgment creditor any priority of payment.

Execution not to issue after death.

SEC. 5475. When any judgment has been rendered for or against the testator intestate in his lifetime, no execution shall issue thereon after his death, except as provided in Part Second of this Code. A judgment against the decedent for the recovery of money, must be presented to the executor or administrator like any other claim. If execution is actually levied upon any property of the decedent before his death, the same may be sold for the satisfaction thereof; and the officer making the sale must account to the executor or administrator for any surplus in his hands. A judgment creditor having a judgment which was rendered against the testator or intestate in his lifetime, may redeem any real estate of the decedent from any sale under foreclosure or execution in like manner and with like effect, as if the judgment debtor were still living.

SEC. 5476. A judgment rendered against a decedent, dying after verdict or decision on an issue of fact, but before judgment is rendered thereon, is not a lien on the real property of the decedent, but is payable in due course of administration.

What judgment is not a lien on real property of estate.

SEC. 5477. If the executor or administrator doubts the correctness of any claim presented to him, he may enter into an agreement, in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the Probate Judge. Upon filing the agreement and approval of the Probate Judge in the office of the Clerk of the District Court for the county in which the letters testamentary or of administration were granted, the Clerk must, either in vacation or in term, enter a minute of the order referring the matter in controversy to the person so selected; or, if the parties consent, a reference may be had in the Probate Court; and the report of the referee, if confirmed, establishes or rejects the claim, the same as if it had been allowed or rejected by the executor, or administrator and the Probate Judge.

May refer doubtful claims.

Effect of referee's allowance or rejection.

SEC. 5478. The referee must hear and determine the matter, and make his report thereon to the court in which his appointment is entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, be entitled to the same compensation and subject to the same control, as in other cases of reference. The court may remove the referee, appoint another in his place, set aside or confirm his report, and adjudge costs, as in actions against executors or administrators, and the judgment of the court thereon, shall be as valid and effectual, in all respects as if the same had been rendered in a suit commenced by ordinary process.

Trial by referee how confirmed and its effect.

SEC. 5479. When a judgment is recovered, with costs, against any executor or administrator, he shall be individually liable for such costs, but they must be allowed him in his administration accounts, unless it appears that the suit or proceeding in which the costs were taxed was prosecuted or defended without just cause.

Liability of executor, etc., for costs.

SEC. 5480. If the executor or administrator is a creditor of the decedent, his claim, duly authenticated by affidavits, must be presented for allowance or rejection to the Probate Judge, and its allowance by the Judge is sufficient evidence of its correctness, and it must be paid as other claims, in due course of administration. If, however, the Probate Judge rejects the claim, action thereon may be had against the estate by the claimant, and summons must be served upon the Probate Judge, who may appoint an attorney at the expense of the estate, to defend the action. If the claimant recovers no judgment, he must pay all costs, including defendant's attorney's fees.

Claims of executor, etc. against an estate.

SEC. 5481. If an executor or administrator neglects for two months after his appointment to give notice to creditors, as prescribed by this chapter, the court must revoke his letters, and appoint some other person in his stead, equally or the next in order entitled to the appointment.

Executor neglecting to give notice to creditors, to be removed.

SEC. 5482. At the same term at which he is required to return his inventory, the executor or administrator must also return a statement of all claims against the estate

Executor to return statement of claims.

which have been presented to him, if so required by the court; and from term to term thereafter he must present a statement of claims subsequently presented to him. In all statements he must designate the names of the creditors, the nature of each claim, when it becomes due or will become due, and whether it was allowed or rejected by him.

Payment of interest on claims.

SEC. 5483. If there be any debt of the decedent bearing interest, whether presented or not, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid. This section does not apply to existing debts, unless the creditor consent to accept the amount.

CHAPTER VII.

OF SALES AND CONVEYANCES OF PROPERTY OF DECEDENT.

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Personal estate first chargeable.

Real estate, when sold.

SECTION 5490. The personal estate of the decedent which comes into the hands of the executor or administrator is first chargeable with the payment of the debts and expenses; if the goods, chattels, rights, and credits in the hands of the executor or administrator are not sufficient to pay the debts of the decedent, the expenses of administration, and the allowance to the family, the whole of the real estate may be sold for that purpose by the executor or administrator.

SEC. 5491. No sale of any property of an estate of a decedent is valid unless made under order of the Probate Court, except as otherwise provided in this chapter. All sales must be reported under oath, and confirmed by the Probate Court, before the title of the property sold passes.

No sales valid, except by order of probate court.

SEC. 5492. All petitions for orders of sale must be in writing, setting forth the facts showing the sale to be necessary, and, upon the hearing, any person interested in the estate may file his written objections which must be heard and determined. A failure to set forth the facts showing the sale to be necessary will not invalidate the subsequent proceedings, if the defect be supplied by the proofs at the hearing, and the general facts showing the necessity be stated in the order directing the sale.

Applications for orders of sale, etc.

SEC. 5493. When it appears to the court that the estate is insolvent, or that it will require a sale of all the property of the estate, of every character, to pay the family allowance, expenses of administration, and debts, there need be but one petition filed, but one order of sale made, and but one sale had, except in the case of perishable property, which may be sold as provided in the next section. The Probate Court, when a petition for the sale of any property, for any of the purposes herein named, is presented, must inquire fully into the probable amount required to make all such payments, and if there be no more estate than sufficient to pay the same, may require but one proceeding for the sale of the entire estate. In such case the petition must set forth substantially the facts required in a petition for the sale of real estate.

But one petition, order, and sale must be had, except in case of perishable property.

SEC. 5494. At any time after receiving letters the executor, administrator, or special administrator, may apply to the court or Judge and obtain an order to sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The order for the sale may be made without notice; but the executor, administrator, or special administrator is responsible for the property, unless, after making a sworn return, and on a proper showing, the court shall approve the sale.

Perishable and depreciating property to be sold.

SEC. 5495. If claims against the estate have been allowed and a sale of property is necessary for their payment or the expense of administration, the executor, or administrator may apply for an order to sell so much of the personal property as may be necessary therefor. Upon filing his petition, notice of at least five days must be given of the hearing of the application, either by posting notices or by advertising. He may also make a similar application, either in vacation or term, from time to time, so long as any personal property remains in his hands and sale thereof is necessary. If it is made to appear for the best interests of the estate, he may at any time after filing the inventory, in like manner and after giving like notice, apply for and obtain an order to sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not.

Order to sell personal property.

SEC. 5496. Partnership interests or interests belonging to any estate by virtue of any partnership formerly existing, interest in personal property pledged, and choses in

Partnership interests and choses in action, how sold.

action, may be sold in the same manner as other personal property when it appears to be for the best interest of the estate. Before confirming the sale of any partnership interest, whether made to the surviving partner or to any other person, the court or Judge must carefully inquire into the condition of the partnership affairs, and must examine the surviving partner if in the county and able to be present in court.

Order of sale, what to direct, etc.

SEC. 5497. If it appears that a sale is necessary for the payment of debts or the family allowance, or for the best interest of the estate and the persons interested in the property to be sold, whether it is or is not necessary to pay the debts or family allowance, the court or Judge must order it to be made. In making orders and sales for the payment of debts or family allowance, the court or Judge must so direct; and such articles as are not necessary for the support and subsistance of the family of the decedent, or are not specially bequeathed, must be first sold. Articles bequeathed must not be sold to pay debts or family allowance, until all other personal estate has been applied to the payment thereof.

Sale of personal property.

SEC. 5498. The sale of personal property must be made at public auction, and after public notice, given for at least ten days, by notices posted in three public places in the county, or by publication in a newspaper, or both, containing the time and place of sale, and a brief description of the property to be sold; unless for good reason shown, the Probate Court or Judge orders a private sale, or a shorter notice. Public sales shall not be made of any property which is not present at the time of selling it, unless the court otherwise order.

Mines may be sold, how.

SEC. 5499. When it appears from the inventory of the estate of any decedent that his estate consists in whole or in part of mines or interests in mines, such mines or interests may be sold under the order of the Probate Court having jurisdiction of the estate, as hereinafter provided.

Petition for sale, who may file and what to contain.

SEC. 5500. The executor, administrator, or any heir at law, or creditor of the estate, any partner or member of any mining company in which interests or shares are held or owned by the estate, may file in the Probate Court a petition in writing, setting forth the general facts of the estate being then in due course of administration, and particularly describing the mine, interest, or shares which it is desired to sell, and particularly the condition and situation of the mines or mining interests, or of the mining company in which such interests or shares are held, and the grounds upon which the sale is asked to be made.

Order to show cause, how made and on what notice.

SEC. 5501. Upon the presentation of such petition the Probate Judge must make an order directing all persons interested to appear before him at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell such mines, mining interests, shares, or stocks, as are set forth in the petition and belonging to the estate. A copy of the order to show cause must be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or published at least four successive weeks in such newspaper as the court shall specify. If all persons interested in the estate signify in writing their assent to such sale, the notice may be dispensed with.

Order of sale, when and how made.

SEC. 5502. If upon hearing the petition, it appears to the satisfaction of the Probate Judge that it is to the interest of the estate that such mining property or interests of the estate should be sold, or if it appears to his satisfaction that an immediate sale is necessary in order to secure the just rights or interests of the mining partners, or tenants in common, such Probate Judge must make an order authorizing the executor or administrator to sell such mining interests, mines, or shares, as hereinafter provided.

Further proceedings.

SEC. 5503. After the order of sale is made, all further proceedings for the sale of such mining property, and for the notice, report, and confirmation thereof, must be as provided upon the sale of real estate.

To sell real estate, when.

SEC. 5504. When the personal estate in the hands of the executor or administrator is exhausted or insufficient to pay the allowance of the family, the debts outstanding against the decedent, and the debts, expenses, and charges of administration, the executor or administrator may sell the real estate for that purpose, upon the order of the Probate Court.

Verified petition for sale, what to contain, etc.

SEC. 5505. To obtain such order he must present a verified petition to the Probate Court, or to the Judge at chambers, setting forth the amount of personal estate that has come to his hands, and how much thereof, if any, remains undisposed of; the debts oustanding against the decedent, as far as can be ascertained or estimated; the amount due upon the family allowance, or that will be due after the same has been in force for one year; the debts, expenses, and charges of administration already accrued, and an estimate of what will or may accrue during the administration; a description of all the real estate of which the decedent died seized, or in which he had any interest, or in which the estate has acquired any interest, and the condition and value of the respective portions and lots thereof, and whether the same be community or separate property; the names and ages of the devises, if any, and of the heirs of the decedent. If all the matters above enumerated cannot be ascertained it must be so stated in the petition.

Order to persons interested to appear.

SEC. 5506. If it appears to the court or Judge, from such petition, that it is necessary to sell the whole or some portion of the real estate for the purposes and reasons mentioned in the preceding section, or any of them, such petition must be filed and an order thereupon made, directing all persons interested in the estate to appear before the court, at a time and place specified, not less than four nor more than ten weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the decedent as is necessary.

Copy to be served, assent given, or publication made.

SEC. 5507. A copy of the order to show cause must be personally served on all persons interested in the estate, and on any general guardian of any minor, devisee, or heir of the decedent resident in the county, at least five days before the time appointed for hearing the petition, or must be published at least four successive weeks in such newspaper as the court or Judge shall direct.

The notice is served if the publication is completed five days before the day set for hearing. If all persons interested in the estate join in the petition for the sale, or signify in writing their assent thereto, the notice may be dispensed with.

Hearing after proof of service.

SEC. 5508. The Probate Court, at the time and place appointed in such order, or at such other time to which the hearing may be postponed, upon satisfactory proof of personal service or publication of a copy of the order, by affidavit or otherwise, if the consent in writing to such sale of all parties interested is not filed, must proceed to hear the petition, and hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application.

Administrator, etc., may be examined.

SEC. 5509. The executor, administrator and witnesses may be examined on oath by either party, and process to compel them to attend and testify may be issued by the Probate Judge, in the same manner and with like effect as in other cases.

To sell real estate or any part, when.

SEC. 5510. If it appears necessary to sell a part of the real estate, and that by a sale thereof the residue of the estate, real or personal, or some specific part thereof, would be greatly injured or diminished in value, or subjected to expense, or rendered unprofitable, or that after any such sale the residue would be so small in quantity or value, or would be of such a character with reference to its future disposition among the heirs or devisees, as clearly to render it for the best interests of all concerned that the same should be sold, the court may authorize the sale of the whole estate or of any part thereof, necessary and for the best interest of all concerned.

Order of sale, when to be made.

SEC. 5511. If the court is satisfied, after a full hearing upon the petition and an examination of the proofs and allegations of the parties interested, that a sale of the whole or some portion of the real estate is necessary for any of the causes mentioned in this chapter, or if such sale be assented to by all the persons interested, an order must be made to sell the whole, or so much and such parts of the real estate described in the petition as the court shall judge necessary or beneficial.

What order of sale must contain.

SEC. 5512. The order of the sale must describe the lands to be sold and the terms of sale, which may be for cash or on a credit not exceeding one year, payable in gross or in installments, and in such kind of money, with interest, as the court may direct. The land may be sold in one parcel or in subdivisions as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs.

May be at public or private sale.

If it appears that any part of such real estate has been devised and not charged in such devise with the payment of debts or legacies, the court must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction unless, in the opinion of the court, it would benefit the estate to sell the whole or some part of such real estate at private sale; the court may, if the same is asked for in the petition, order or direct such real estate or any part thereof, to be sold at either public or private sale as the executor or administrator shall judge to be most beneficial for the estate.

If the executor or administrator neglects or refuses to make a sale under the order and as directed therein, he may be compelled to sell by order of the court, made on motion after due notice, by any party interested.

Interested persons may apply for order of sale.

SEC. 5513. If the executor or administrator neglects to apply for an order of sale when it is necessary, any person interested in the estate may make application therefor, in the same manner as the executor or administrator, and notice thereof must be given to the executor or administrator before the hearing. The petition of such applicant must contain as many of the matters required in petitions of executors and administrators as he can ascertain, and the decree of sale must fix the period of time within which the executor or administrator must make the sale.

Form of petition.

To deliver copy of order to executor.

SEC. 5514. Upon making the order mentioned in the last section, a certified copy of the order of sale must be delivered by the court or the Clerk to the executor or administrator, who is thereupon authorized and required to sell the real estate as directed.

Notice of sale.

SEC. 5515. When a sale is ordered, and is to be made at public auction, notice of the time and place of sale must be posted in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, but if more, then in such paper as the court may direct, for three weeks successively next before the sale. The lands and tenements to be sold must be described with common certainty in the notice.

Time and place.

SEC. 5516. Sales at public auction must be made in the county where the land is situated; but when the land is situated in two or more counties, it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day, and must be made on the day named in the notice of sale, unless the same is postponed.

Private sale of real estate, how made, etc.

SEC. 5517. When a sale of real estate is ordered to be made at private sale, notice of the same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county—if none, then in such paper as the court may direct—for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice, and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, or deliver to the executor or administrator personally, or may be filed in the office of the Clerk of the Probate Court, to which the return of sale must be made, at any time after the first publication of the notice, and before the making of the sale. If it is shown

Bids, when and how received.

that it will be for the best interest of the estate, the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice, in which case the notice of sale and the sale may be made to correspond with such order.

Ninety per cent of appraised value must be offered.

SEC. 5518. No sale of real estate at private sale shall be confirmed by the court unless the sum offered is at least ninety per cent of the appraised value thereof, nor unless such real estate has been appraised, within one year of the time of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, appraisers must be appointed and they must make an appraisement thereof in the same manner as in case of an original appraisement of an estate. This may be done at any time before the sale or the confirmation thereof.

Purchase money on sale or credit, how secured.

SEC. 5519. The executor or administrator must, when the sale is made upon a credit, take the notes of the purchaser for the purchase money, with a mortgage on the property to secure their payment.

Hearing and setting aside sale, and when re-sale may be ordered.

SEC. 5520. The executor or administrator, after making any sale of real estate, must make a return of his proceedings to the court, which must be filed in the office of the Clerk at any time subsequent to the sale. A hearing upon the return of the proceedings may be asked for in the return or by petition subsequently, and thereupon the court or Judge must fix the day for the hearing, of which notice of at least ten days must be given by the Clerk by notices posted in three public places in the county, or by publication in a newspaper, or both, as the court or Judge shall direct, and must briefly indicate the land sold, the sum for which it was sold, and must refer to the return for further particulars. Upon the hearing, the court must examine the return and witnesses in relation to the same, and if the proceedings were unfair, or the sum bid disproportionate to the value, and if it appear that a sum exceeding such bid at least ten per cent, exclusive of the expenses of a new sale, may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given, and the sale in all respects conducted as if no previous sale had taken place; if an offer of ten per cent more in amount than that named in the return be made to the court in writing by a responsible person it is in the discretion of the court to accept such offer and confirm the sale to such person, or to order a new sale.

May file objections, when and who.

SEC. 5521. When return of the sale is made and filed, any person interested in the estate may file written objections to the confirmation thereof and may be heard thereon when the return is heard by the court or Judge, and may produce witnesses in support of his objections.

When order of confirmation is to be made, and when not.

SEC. 5522. If it appears to the court that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum, as above specified, cannot be obtained, or if the increased bid before mentioned be made and accepted by the court, the court must make an order confirming the sale, and directing conveyances to be executed. The sale, from that time, is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed must be recorded in the office of the Recorder of the County within which the land sold is situated. If, after the confirmation, the purchaser neglects or refuses to comply with the terms of sale, the court may, on motion of the executor or administrator, and after notice to the purchaser, order a re-sale to be made of the property. If the amount realized on such re-sale does not cover the bid and the expenses of previous sale, such purchaser is liable for the deficiency to the estate.

Conveyances

SEC. 5523. Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the orders of the Probate Court authorizing and confirming the sale of the property of the estate, and directing conveyances thereof to be executed, and to the record of the order of confirmation in the office of the County Recorder, either by the date of such recording, or by the date, volume, and page of the record, and such reference shall have the same effect as if the orders were, at large, inserted in the conveyance. Conveyances so made convey all the right, title, interest, and estate of the decedent, in the premises, at the time of his death; if, prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises, other than, or in addition to, that of the decedent at the time of his death, such right, title, or interest also passes by such conveyances.

Order of confirmation, what to state.

SEC. 5524. Before any order is entered confirming the sale, it must be proved to the satisfaction of the court that notice was given of the sale as prescribed, and the order of confirmation must show that such proof was made.

Sale may be postponed.

SEC. 5525. If at the time appointed for the sale, the executor or administrator deems it for the interest of all persons concerned therein that the same be postponed, he may postpone it from time to time, not exceeding in all three months.

Notice of postponement.

SEC. 5526. In case of a postponement, notice thereof must be given, by a public declaration, at the time and place first appointed for the sale, and if the postponement be for more than one day, further notice must be given, by posting notices in three or more public places in the county where the land is situated, or publishing the same, or both, as the time and circumstances will admit.

Payment of debts, etc., provided for by will.

SEC. 5527. If the testator makes provisions by his will, or designates the estate to be appropriated for the payment of his debts, the expenses of administration, or family expenses, they must be paid according to such provision or designation, out of the estate thus appropriated, so far as the same is sufficient.

Sales without order, amended.

SEC. 5528. When property is directed by the will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without order of the court, and at either public or private sale, and with or without notice, as the executor may determine; but the executor must make return of such sales as in other cases; and if directions are given in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case, no title passes unless the ale be confirmed by the court.

When provision by will insufficient.

SEC. 5529. If the provision made by the will, or the estate appropriated therefor, is insufficient to pay the debts, expenses of administration, and family expenses, that portion of the estate not devised or disposed of by the will, if any, must be appropriated and disposed of for that purpose, according to the provisions of this chapter.

Estate subject to debts, etc.

SEC. 5530. The estate, real and personal, given by will to legatees or devisees, is liable for the debts, expenses of administration, and family expenses, in proportion to the value or amount of the several devises or legacies, but specific devises or legacies are exempt from such liability if it appears to the court necessary to carry into effect the intention of the testator, and there is other sufficient estate.

Contribution among legatees.

SEC. 5531. When an estate given by will has been sold for the payment of debts or expenses, all the devisees and legatees must contribute according to their respective interests to the devisee or legatee whose devise or legacy has been taken therefor, and the Probate Court, when distribution is made, must, by decree for that purpose, settle the amount of the several liabilities, and decree the amount each person shall contribute, and reserve the same from their distributive shares respectively, for the purpose of paying such contribution.

Contract for purchase of lands may be sold, how.

SEC. 5532. If a decedent, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land and under such contracts may be sold on the application of his executor or administrator in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed in this chapter for the sale of lands of which he died seized, except as hereinafter provided.

Conditions of sale.

SEC. 5533. The sale must be made subject to all payments that may thereafter become due on such contracts, and if there are any such, the sale must not be confirmed by the Probate Judge until the purchasers execute a bond to the executor or administrator, for the benefit and indemnity of himself and of the persons entitled to the interest of the decedent in the lands so contracted for, in double the whole amount of payments thereafter to become due on such contract, with such sureties as the Probate Judge shall approve.

Purchaser to give bond.

SEC. 5534. The bond must be conditioned that the purchaser will make all payments for such land that shall become due after the date of the sale, and will fully indemnify the executor or administrator, and the persons so entitled against all demands, costs, charges and expenses, by reason of any covenant or agreement contained in such contract.

Executor to assign contract.

SEC. 5535. Upon the confirmation of the sale, the executor or administrator must execute to the purchaser an assignment of the contract which vests in the purchaser, his heirs and assigns, all the right, title and interest of the estate, or of the persons entitled to the interest of the decedent, in the lands sold at the time of the sale, and the purchaser has the same rights and remedies against the vender of such land as the decedent would have had if he were living.

Sales by executors or administrators of lands under mortgage lien.

SEC. 5536. When any sale is made by an executor or administrator, pursuant to the provisions of this chapter, of lands subject to any mortgage or other lien, which is a valid claim against the estate of the decedent, and has been presented and allowed, the purchase money must be applied, after paying the necessary expenses of the sale, first to the payment and satisfaction of the mortgage or lien, and the residue, if any, in due course of administration. The application of the purchase money to the satisfaction of the mortgage or lien must be made without delay; and the land is subject to such mortgage or lien until the purchase money has been actually so applied. No claim against any estate which has been presented and allowed is affected by the Statute of Limitations, pending the proceedings for the settlement of the estate.

The purchase money, or so much thereof as may be sufficient to pay such mortgage or lien, with interest, and any lawful costs and charges thereon, may be paid into the Probate Court to be received by the Clerk thereof, whereupon the mortgage or lien upon the land must cease, and the purchase money must be paid over by the Clerk of the Court without delay, in payment of the expenses of the sale, and in satisfaction of the debt, to secure which the mortgage or other lien was taken, and the surplus, if any, at once returned to the executor or administrator unless for good cause shown, after notice to the executor or administrator, the court otherwise directs.

Holder of mortgage lien may purchase lands, etc.

SEC. 5537. At any sale under order of the Probate Court of lands upon which there is a mortgage or lien, the holder thereof may become the purchaser, and his receipt for the amount due him from the proceeds of the sale is a payment protanta. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay to the court or the Clerk thereof, an amount sufficient to pay such expenses.

Administrator and executor liable for misconduct in sale.

SEC. 5538. If there is any neglect or misconduct in the proceedings of the executor in relation to any sale, by which any person interested in the estate suffers damage, the party aggrieved may recover the same in an action upon the bond of the executor or administrator, or otherwise.

Fraudulent sales.

SEC. 5539. Any executor or administrator who fraudulently sells any real estate of a decedent contrary to or otherwise than under the provisions of this chapter, is liable in double the value of the land sold, as liquidated damages, to be recovered in an action by the person having an estate of inheritance therein.

Limitation for actions for vacating sale, etc.

SEC. 5540. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter, can be maintained by any heir or other person claiming under the decedent, unless it be commenced within three years next after the sale. An action to set aside the sale may be instituted and maintained at any time within three years from the discovery of the fraud, or other grounds upon which the action is based.

To what cases preceding section not to apply.

SEC. 5541. The preceding section shall not apply to minors or others under any legal disability, to sue at the time when right of action first accrues; but all such persons may commence an action at any time within three years after the removal of the disability.

Account of sale to be returned.

SEC. 5542. When a sale has been made by an executor or administrator of any property of the estate, real or personal, he must return to the Probate Court, at its next term thereafter, an account of sales, verified by his affidavit. If he neglects to make such return, he may be punished by attachment, or his letters may be revoked, one day's notice having been first given him to appear and show cause why such attachment should not issue, or such revocation should not be made.

Executors, etc., not to be purchasers.

SEC. 5543. No executor or administrator must, directly or indirectly, purchase any property of the estate he represents, nor must he be interested in any sale.

CHAPTER VIII.

OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS, AND OF THE MANAGEMENT OF ESTATES.

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5550. Executors to take possession of the entire estate.
5551. Executors may sue and be sued for recovery of property.
5552. May maintain actions for waste, conversion and trespass.
5553. Executor and administrator may be sued for waste or trespass of decedent.
5554. Surviving partner to settle up business. Interest therein to be appraised. Account to be rendered.

SECTION
5555. Actions on bond of executor or administrator may be brought by another administrator.
5556. What executors are not parties to action.
5557. May compound.
5558. Recovery of property fraudulently disposed of by testator.
5559. When executor to sue, as provided in preceding section.
5560. Disposition of estate recovered.

Executor to take possession of the entire estate.

SECTION 5550. The executor or administrator must take into possession all the estate of the decedent, real and personal, and collect all debts due to the decedent or to the estate. For the purpose of bringing suits to quiet title, or for partition of such estate, the possession of the executors or administrators is the possession of the heirs or devisees; such possession by the heirs or devisees is subject, however, to the possession of the executor or administrator, for the purposes of administration as provided in this Title.

Executors may sue and be sued.

SEC. 5551. Actions for the recovery of any property, real or personal, or for the possession thereof, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

May maintain actions for waste, etc.

SEC. 5552. Executors and administrators may maintain actions against any person who has wasted, destroyed, taken, or carried away, or converted to his own use, the goods of their testator or intestate, in his lifetime. They may also maintain actions for trespass committed on the real estate of the decedent in his lifetime.

Executor and administrator may be sued for waste, etc.

SEC. 5553. Any person or his personal representatives may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Surviving partner to settle business

SEC. 5554. When a partnership exists between the decedent, at the time of his death, and any other person, the surviving partner has the right to continue in possession of the partnership, and to settle its business, but the interest of the decedent in the partnership must be included in the inventory, and be appraised as other property. The surviving partner must settle the affairs of the partnership without delay, and account with the executor or administrator, and pay over such balances as may from time to time be payable to him, in right of the decedent. Upon the application of the executor or administrator, the Probate Judge may, whenever it appears necessary, order the surviving partner to render an account, and in case of neglect or refusal may, after notice, compel it by attachment; and the executor or administrator may maintain against him any action which the decedent could have maintained.

Interest to be appraised.

Account to be rendered.

Actions on bond of executor, etc.

SEC. 5555. An administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

What executors are not parties to actions.

SEC. 5556. In actions by or against executors, it is not necessary to join those as parties to whom letters were issued, but who have not qualified.

May compound.

SEC. 5557. Whenever a debtor of a decedent is unable to pay all his debts, the executor or administrator, with the approbation of the Probate Court or Judge, may compound with him, and give him a discharge upon receiving a fair and just dividend of his effects. A compromise may also be authorized, when it appears to be just, and for the best interest of the estate.

Recovery of property fraudulently disposed of by testator.

SEC. 5558. When there is a deficiency of assets in the hands of an executor or administrator, and when the decedent, in his lifetime, has conveyed any real estate, or any rights or interests therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person, or so conveyed such estate that by law the deeds or conveyances are void as against creditors, the executor or administrator must commence and prosecute to final judgment any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights, or credits which have been so conveyed by the decedent in his lifetime, whatever may have been the manner of such fraudulent conveyance.

When executor to sue.

SEC. 5559. No executor or administrator is bound to sue for such estate as mentioned in the preceding section, for the benefit of the creditors, unless on application of creditors, who must pay such part of the costs and expenses of the suit or give such security to the executor or administrator therefor, as the Probate Judge shall direct.

Disposition of estate recovered.

SEC. 5560. All real estate so recovered must be sold for the payment of debts in the same manner as if the decedent had died seized thereof, upon obtaining an order therefor from the Probate Court; and the proceeds of all goods, chattels, rights, and credits so recovered must be appropriated in payment of the debts of the decedent in the same manner as other property in the hands of the executor or administrator.

CHAPTER IX.

OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

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5573. Recording decree does not supercede power of court to enforce it.
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5575. Decree may direct possession to be surrendered.

Executor to complete contracts for sale of real estate.

SECTION 5565. When a person who is bound by contract in writing to convey any real estate, dies before making the conveyance, where such decedent, if living, might be compelled to make such conveyance, the Probate Court may make a decree authorizing and directing his executor or administrator to convey such real estate to the person entitled thereto.

Petition for executor to make conveyance.

SEC. 5566. On the presentation of a verified petition by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the Probate Court must appoint a time and place for hearing the petition, at a regular term of the court, and must order notice thereof to be published at least four successive weeks before such hearing, in such newspaper in this Territory as he may designate.

Interested parties, may contest.

SEC. 5567. At the time and place appointed for the hearing, or at such other time to which the same may be postponed upon satisfactory proof, by affidavit or otherwise, of the due publication of the notice, the court must proceed to a hearing, and all persons interested in the estate may appear and contest such petition, by filing their objections in writing, and the court may examine on oath, the petitioner and all who may be produced before him for that purpose.

Conveyances, when ordered to be made.

SEC. 5568. If, after a full hearing upon the petition and objections, and examination of the facts and circumstances of the claim, the court is satisfied that the petitioner is entitled to a conveyance of the real estate described in the petition, a decree authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner must be made, entered on the minutes of the court, and recorded.

Execution of conveyance, etc., how enforced.

SEC. 5569. The executor or administrator must execute the conveyance according to the directions of the decree, a certified copy of which must be recorded with the deed in the office of the Recorder of the county where the land lies, and is *prima facie* evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Rights of petitioner to enforce contract.

SEC. 5570. If, upon hearing in the Probate Court, as hereinbefore provided, the right of the petitioner to have a specific performance of the contract is found to be doubtful, the court must dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed, in the District Court, to enforce a specific performance thereof.

SEC. 5571. Every conveyance made in pursuance of a decree of the Probate Court, as provided in this chapter, shall pass the title to the estate contracted for as fully as if the contracting party himself was still living and executed the conveyance.

Effect of conveyance.

SEC. 5572. A copy of the decree for a conveyance made by the Probate Court, and duly certified and recorded in the office of the Recorder of the county where the lands lie, gives the person entitled to the conveyance a right to the possession of the lands contracted for, and to hold the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Effect of recording a copy of the decree.

SEC. 5573. The recording of any decree, as provided in the preceding section, shall not prevent the court making the decree from enforcing the same by other process.

Recording decree, etc.

SEC. 5574. If the person entitled to the conveyance dies before the commencement of the proceedings therefor under this chapter, or before the completion of the conveyance, any person entitled to succeed to his rights in the contract, or the executor or administrator of such decedent may for the benefit of the person so entitled, commence such proceedings, or prosecute any already commenced, and the conveyance must be so made as to vest the estate in the persons entitled to it, or in the executor or administrator, for their benefit.

Where party to whom conveyance to be made is dead.

SEC. 5575. The decree provided for in this chapter may direct the possession of the property therein described to be surrendered to the person entitled thereto, upon his producing the deed and a certified copy of the decree, when by the terms of the contract, possession is to be surrendered.

Decree may direct possesion to be surrendered.

CHAPTER X.

OF ACCOUNTS RENDERED BY EXECUTORS AND ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS.

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5613. Claims not included in order for payment of debts, how disposed of.
5614. Order for payment of legacies and extension of time.
5615. Final account, when to be made.
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When executor or administrator personally liable.

SECTION 5580. No executor or administrator is chargeable upon any special promise to answer damages or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Executor to be charged with all estate.

SEC. 5581. Every executor and administrator is chargeable in his account with the whole of the estate of the decedent which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit, and income of the estate.

Not to profit or lose by estate.

SEC. 5582. He shall not make profit by the increase, nor suffer loss by the decrease, or destruction, without his fault, of any part of the estate. He must account for the excess when he sells any part of the estate for more than the appraisement, and if any is sold for less than the appraisement, he is not responsible for the loss, if the sale has been justly made.

Uncollected debts without fault.

SEC. 5583. No executor or administrator is accountable for any debts due to the decedent, if it appears that they remain uncollected without his fault.

Compensation of executor, etc.

SEC. 5584. He shall be allowed all necessary expenses in the care, management, and settlement of the estate, and for his services such fees as provided in this chapter; but when the decedent, by his will, makes some other provision for the compensation of his executor, that shall be a full compensation for his services, unless, by a written instrument, filed in the Probate Court, he renounce all claim for compensation provided by the will.

Not to purchase claims against the estate.

SEC. 5585. No administrator or executor shall purchase any claim against the estate he represents; and if he pays any claim for less than its nominal value he is only entitled to charge in his account the amount he actually paid.

Executor's and administrator's commissions.

SEC. 5586. When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent; for all above that sum and not exceeding ten thousand dollars, at the rate of five per cent; for all above that sum, at the rate of four per cent; and the same commission must be allowed administrators. In all cases, such further allowance may be made as the Probate Judge may deem just and reasonable, for any extraordinary service. The total amount of such allowance must not exceed the amount of commissions allowed by this section.

To render an exhibit of receipts, etc.

SEC. 5587. At the third term of the court after his appointment, and thereafter at any time when required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Citation to account at third term.

SEC. 5588. If the executor or administrator fails to render an exhibit at the third term of the court, the Judge of the Probate Court must cause a citation to be issued requiring him to appear and render it.

Petition for citation.

SEC. 5589. Any person interested in the estate may, at any time before the final settlement of accounts, present his petition to the Probate Judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

Citation to account on application.

SEC. 5590. If the Judge is satisfied, either from the oath of the applicant or from any other testimony offered, that the facts alleged are true, and considers the showing of the applicant sufficient, he must direct a citation to be issued to the executor or administrator, requiring him to appear at some day to be named in the citation, which must be during a term of the court, and render an exhibit as prayed for.

Objections to account, who may file.

SEC. 5591. When an exhibit is rendered by an executor or administrator, any person interested may appear and, by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he has been guilty of neglect, or has wasted, embezzled, or mismanaged the estate, his letters must be revoked.

Attachment for not obeying citation.

SEC. 5592. If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may be issued against him and such exhibit enforced, or his letters may be revoked, in the discretion of the court.

Amended to render accounts at expiration of term.

SEC. 5593. Within thirty days after the expiration of the time mentioned in the notice to creditors within which claims must be exhibited, every executor or administrator must render a full account and report of his administration. If he fails to present his account, the court or Judge must compel the rendering of the account by attachment, and any person interested in the estate may apply for and obtain an attachment; but no attachment must issue unless a citation has been first issued, served, and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue. Every account must exhibit all debts which have been presented and allowed during the period embraced in the account.

Executor to account after his authority revoked.

SEC. 5594. When the authority of an executor or administrator ceases or is revoked for any reason, he may be cited to account before the Probate Court at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate during the time he was executor or administrator.

When revoking authority of executor.

SEC. 5595. If the executor or administrator resides out of the county, or absconds, or conceals himself, so that the citation cannot be personally served, and neglects to render an account within thirty days after the time above prescribed, or if he neglects to render an account within thirty days after being committed where the attachment has been executed, his letters must be revoked.

To produce and file vouchers, which remain in court.

SEC. 5596. In rendering his account, the executor or administrator must produce and file vouchers for all charges, debts, claims, and expenses which he has paid, which must remain in the court; and he may be examined on oath touching such payments, and also touching any property and effects of the decedent, and the disposition thereof. When any voucher is required for other purposes, it may be withdrawn on leaving a certified copy on file; if a voucher is lost, or for other good reason cannot be produced on the settlement, the payment may be proved by the oath of any competent witness.

Vouchers for items, etc., less than twenty dollars.

SEC. 5597. On the settlement of his account he may be allowed any item of expenditure, not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole must not exceed five hundred dollars against any one estate.

Day of settlements.

Notice

SEC. 5598. When any account is rendered for settlement, the court or Judge must appoint a day for the settlement thereof; the Clerk must thereupon give notice thereof, by causing notices to be posted in at least three public places in the county, setting forth the name of the estate, the executor or administrator, and the day appointed for the settlement of the account, which must be on some day of a term of the court. The court or Probate Judge may order such further notice to be given as may be proper.

Final settlement and distribution, amended.

SEC. 5599. If the account mentioned in the preceding section be for a final settlement, and a petition for the final distribution of the estate be filed with said account, the notice of the settlement must state those facts, which notice must be given by posting a publication, as the court may direct, and for such time as may be ordered. On the settlement of said account, distribution and partition of the estate to all entitled thereto may be immediately had without further notice or proceedings.

Interested party may file exceptions.

SEC. 5600. On the day appointed, or any subsequent day to which the hearing may be postponed by the court, any person interested in the estate may appear and file his exceptions in writing to the account and contest the same.

Heirs may contest all matters.

SEC. 5601. All matters including allowed claims not passed upon on the settlement of any former account, or on rendering an exhibit, or on making a decree of sale, may be contested by the heirs for cause shown. The hearing and allegations of the respective parties may be postponed from time to time, when necessary, and the court may appoint one or more referees to examine the accounts and make report thereon, subject to confirmation; and may allow a reasonable compensation to the referees, to be paid out of the estate of the decedent.

Hearing.

Settlement of accounts to be conclusive.

SEC. 5602. The settlement of the account and the allowance thereof by the court, or upon appeal, is conclusive against all persons in any way interested in the estate, saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities cease; and in any action brought by any such person, the allowance and settlement of the account is prima facie evidence of its correctness.

Proof of notice of settlement of accounts.

SEC. 5603. The account must not be allowed by the court until it is first proved that notice has been given as required by this chapter, and the decree must show that such proof was made to the satisfaction of the court, and is conclusive evidence of the fact.

Sale of personal in lieu of real property, amendment.

SEC. 5604. Whenever it appears to the court on any hearing of an application for the sale of real property, that it would be for the interest of the estate that personal property of the estate, or some part of such property, should be first sold, the court may decree the sale of such personal property, or any part of it, and the sale thereof shall be conducted in the same manner as if the application had been made for the sale of such personal property in the first instance.

Funds pending settlement, amendment

SEC. 5605. Pending the settlement of any estate, on the petition of any party interested therein, and upon good cause shown therefor, the court may order any moneys in the hands of the executors or administrators to be invested for the benefit of the estate in securities of the United States or of this Territory. Such order can only be made after publication of notice of the petition in some newspaper to be designated by the court or Judge thereof.

Order in which debts to be paid.

SEC. 5606. The debts of the estate must be paid in the following order:

1. Funeral expenses;
2. The expenses of the last sickness;
3. Debts having preference by the laws of the United States;
4. Judgments rendered against the decedent in his lifetime, and mortgages in the order of their date;
5. All other demands against the estate.

When property insufficient to pay mortgage.

SEC. 5607. The preference given in the preceding section to a mortgage only extends to the proceeds of the property mortgaged. If the proceeds of such property is insufficient to pay the mortgage, the part remaining unsatisfied must be classed with the other demands against the estate.

Estate insufficient, a dividend to be paid.

SEC. 5608. If the estate is insufficient to pay all the debts of any one class, each creditor must be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment until all those of the preceding class are fully paid.

Funeral expenses, etc., last sickness, family allowance.

SEC. 5609. The executor or administrator, as soon as he has sufficient funds in his hands, must pay the funeral expenses and the expenses of the last sickness, and the allowance made to the family of the decedent. He may retain in his hands the necessary expenses of the administration, but he is not obliged to pay any other debt or any legacy until, as prescribed in this chapter, the payment has been ordered by the court.

Order for payment of debts and discharge of executor.

SEC. 5610. Upon the settlement of the accounts of the executor or administrator, as required in this chapter, the court must make an order for the payment of the debts, as the circumstances of the estate require. If there is not sufficent funds in the hands of the executor or administrator, the court must specify in the decree the sum to be paid to each creditor. If the whole property or the estate be exhausted by such payment or distribution, such account must be considered as a final account, and the executor or administrator is entitled to his discharge, on producing and filing the necessary vouchers and proofs showing that such payments have been made, and that he has fully complied with the decree of the court.

Provision for disputed and contingent claims.

SEC. 5611. If there is any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established, or absolute, must be paid into the court, and there remain, to be paid over to the party when he becomes entitled thereto; or, if he fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a pro rata distribution is ordered.

After decree for payment of debts, executor personally liable to creditors.

SEC. 5612. When a decree is made by the Probate Court for the payment of creditors, the executor or administrator is personally liable to each creditor for his allowed claim, or the dividend thereon, and execution may be issued on such decree, as upon a judgment in the District Court, in favor of each creditor, and the same proceeding may be had under such execution as if it had been issued from the District Court. The executor or administrator is liable therefor, on his bond, to each creditor.

Claims not included in order for payment of debts.

SEC. 5613. When the accounts of the administrator or executor have been settled, and an order made for the payment of debts and distribution of the estate, no creditor whose claim was not included in the order for payment has any right to call upon the creditors who have been paid, or upon the heirs, devisees, or legatees to contribute to the payment of his claim; but if the executor or administrator has failed to give the notice to the creditors, as prescribed by this Title, such creditor may recover on the bond of the executor or administrator the amount of his claim, or such part thereof as he would have been entitled to had it been allowed. This section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent and did not become absolute ten months before such day.

Order for payment of legacies, etc.

SEC. 5614. If the whole of the debts have been paid by the first distribution, the court must direct the payment of legacies and the distribution of the estate among the heirs, legatees, or other persons entitled, as provided in the next chapter; but if there be debts remaining unpaid, or if, for other reasons, the estate be not in a proper condition to be closed, the court must give such extension of time as may be reasonable for a final settlement of the estate.

Final account, when to be made.

SEC. 5615. At the time designated in the last section, or sooner, if within that time all the property of the estate has been sold; or there are sufficient funds in his hands for the payment of all the debts due by the estate, and the estate be in a proper condition to be closed, the executor or administrator must render a final account and pray a settlement of his administration.

Neglect to render final account.

SEC. 5616. If he neglects to render his account, the same proceedings may be had as prescribed in this chapter in regard to the first account to be rendered by him; and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, apply to his account presented for final settlement.

CHAPTER XI.

OF THE PARTITION, DISTRIBUTION, AND FINAL SETTLEMENT OF ESTATES.

SECTION
5621. Payment of legacies upon giving bonds.
5622. Notice of application for legacies.
5623. Executor or other person may resist application.
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5628. Distribution when decedent was not a resident of this Territory.
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5631. Estate in common. Commissioners.
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5634. Partition may be made, although some of the heirs, etc., have parted with their interest.

SECTION
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Payment of legacies upon giving bonds.

SECTION 5621. At any time after the lapse of four months from the issuing of letters testamentary or of administration, any heir, devisee, or legatee may present his petition to the court for the legacy or share of the estate to which he is entitled, to be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate.

Notice of application for legacies.

SEC. 5622. Notice of the application must be given to the executor or administrator personally, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator.

Executor, etc., may resist application.

SEC. 5623. The executor or administrator or any person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee, or legatee, may make a similar application for himself.

Decree to require bond, which must be given.

SEC. 5624. If at the hearing it appears that the estate is but little indebted and that the share of the party applying may be allowed to him without loss to the creditors of the estate, the court must make an order in conformity with the prayer of the applicant, requiring:

1. Each heir, legatee, or devisee obtaining such order before receiving his share or any portion thereof, to execute and deliver to the executor or administrator a bond, in such sum as shall be designated by the Probate Judge, with sureties to be approved by the Judge, payable to the executor or administrator, and conditioned for the payment, whenever required, of his proportion of the debts due from the estate, not exceeding the value or amount of the legacy or proportion of the estate to which he is entitled;

2. The executor or administrator to deliver to the heir, legatee or devisee the whole portion of the estate to which

he may be entitled, or only a part thereof, designating it. If in the execution of the order, a partition is necessary, between two or more of the parties interested, it must be made in the manner hereinafter prescribed. The costs of these proceedings shall be paid by the applicant, or if there be more than one, to be apportioned equally amongst them.

When partition necessary, how made.

Costs.

Order for payment of bond.

SEC. 5625. When any bond has been executed and delivered under the provisions of the preceding section, and it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, the executor or administrator must petition the court for an order requiring the payment and have a citation issued and served on the party bound, requiring him to appear and show cause why the order should not be made. At the hearing, the court, if satisfied of the necessity of such payment, must make an order accordingly, designating the amount and giving a time within which it must be paid. If the money is not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Distribution of estate, how made and to whom.

SEC. 5626. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee or devisee, the court must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child and the issue of other children, and any of them, before the close of administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance, must, without administration, be distributed to the other heirs at law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final accounts, must be reported and filed at the time of making such distribution, and a settlement thereof, together with an estimate of the expenses of closing the estate, must be made by the court and included in the order or decree; or the court or Judge may order notice of the settlement of such supplementary account, and refer the same as in other cases of the settlement of accounts.

What the decree must contain.

SEC. 5627. In the order or decree the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand and sue for, and recover their respective shares from the executor or administrator, or any person having the same in possession. Such order or decree is conclusive as to the rights of heirs, legatees or devisees, subject only to be reversed, set aside, or modified on appeal.

Distribution when decedent was not resident of this Territory.

SEC. 5628. Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this Territory, leaving a will which has been duly proved or allowed in the state of his residence, and an authenticated copy thereof has been admitted to probate in this Territory, and it is necessary, in order that the estate or any part thereof may be distributed according to the will, that the estate in this Territory should be delivered to the executor or administrator in the state or place of his residence, the court may order such delivery to be made, and if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed, in this Territory, in relation to all property embraced in such order which, unless recovered on appeal, binds and concludes all parties in interest. Sales of real estate ordered by virtue of this section, must be made in the same manner as other sales of real estate of decedents by order of the Probate Court.

Decree to be made after notice. Amended.

SEC. 5629. The order or decree may be made on the petition of the executor or administrator, or of any person interested in the estate. Notice of the application must be given by posting or publication, as the court may direct, and for such time as may be ordered. If partition be applied for as provided in this chapter, the decree of distribution shall not divest the court of jurisdiction to order partition, unless the estate is finally closed.

No distribution to be ordered till taxes are paid.

SEC. 5630. Before any decree of distribution of an estate is made, the Probate Court must be satisfied, by the oath of the executor or administrator, or otherwise, that all Territorial, county and municipal taxes, legally levied upon personal property of the estate, have been fully paid.

Estate in common.

SEC. 5631. When the estate, real or personal, assigned by the decree of distribution to two or more heirs, devisees or legatees, is in common and undivided, and the respective shares are not separated and distinguished, partition or distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the Probate Court or Judge, who must be duly sworn to the faithful discharge of their duties. A certified copy of the order of their appointment, and of the order or decree assigning and distributing the estate, must be issued to them as their warrant, and their oath must be indorsed thereon. Upon consent of the parties, or when the court deems it proper and just, it is sufficient to appoint one commissioner only, who has the same authority and is governed by the same rules as if three were appointed.

Commissioners.

Partition and notice, time of filing petition.

SEC. 5632. Such partition may be ordered and had in the Probate Court, on the petition of any person interested. But before commissioners are appointed, or partition ordered by the Probate Court, as directed in this chapter, notice thereof must be given to all persons interested, who reside in this Territory, or to their guardians, and to the agents, attorneys, or guardians, if any in this Territory, of such as reside out of the Territory, either personally or by public notice, as the Probate Court may direct. The petition may be filed, attorneys, guardians, and agents appointed, and notice given, at any time before the order or decree of distribution, but the Commissioners must not be appointed until the order or decree is made distributing the estate.

Estate in different counties, how divided.

SEC. 5633. If the real estate is in different counties, the Probate Court may, if deemed proper, appoint a Commissioner for all, or different Commissioners for each county. The estate in each county must be divided separately among the heirs, devisees, or legatees, as if there was no other estate to be divided, but the Commissioner first appointed must, unless otherwise directed by the Probate Court, make division of such real estate, wherever situated within this Territory.

Petition may be made, etc.

Sec. 5634. Partition or distribution of the real estate may be made as provided in this chapter, although some of the original heirs, legatees, or devisees may have conveyed their shares to other persons, and such shares must be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs, legatees, or devisees.

Shares to be set out by metes and bonds.

Sec. 5635. When both distribution and partition are made, the several shares in the real and personal estate must be set out to each individual in proportion to his right, by metes and bounds, or description, so that the same can be easily distinguished, unless two or more of the parties interested consent to have their shares set out so as to be held by them in common and undivided.

Whole estate may be assigned to one, in certain cases.

Sec. 5636. When the real estate cannot be divided without prejudice or inconvenience to the owners, the Probate Court may assign the whole to one or more of the parties entitled to share therein who will accept it, always preferring the males to the females, and among children preferring the elder to the younger. The parties accepting the whole must pay to the other parties interested, their just proportion of the true value thereof, or secure the same to their satisfaction, or, in case of the minority of such party, then to the satisfaction of his guardian, and the true value of the estate must be ascertained and reported by the Commissioners. When the Commissioners appointed to make partition are of the opinion that the real estate cannot be divided without prejudice or inconvenience to the owners, they must so report to the court, and recommend that the whole be assigned as herein provided, and must find and report the true value of such real estate. On filing the report of the Commissioners, and on making or securing the payment as before provided, the court, if it appears just and proper, must confirm the report, and thereupon the assignment is complete and the title to the whole of such real estate vests in the person to whom the same is so assigned.

Payments for equality of partition, by whom and how.

Sec. 5637. When any tract of land or tenement is of greater value than any one's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed to make partition, to any of the parties who will accept it, giving preference as prescribed in the preceding section. The party accepting must pay or secure to the others such sums as the commissioners shall award to make the partition equal, and the commissioners must make their award accordingly; but partition must not be established by the court until the sums awarded are paid to the parties entitled to the same, or secured to their satisfaction.

Estate may be sold.

Sec. 5638. When it appears to the court, from the commissioners' report, that it cannot otherwise be fairly divided, and should be sold, the court may order the sale of the whole or any part of the estate, real or personal, by the executor or administrator, or by a commissioner appointed for that purpose, and the proceeds distributed. The sale must be conducted, reported, and confirmed in the same manner and under the same requirements provided in Chapter VII of this Title.

To give notice to all persons, etc.

SEC. 5639. Before any partition is made or any estate divided, as provided in this chapter, notice must be given to all persons interested in the partition, their guardians, agents, or attorneys, by the commissioners, of the time and place, when and where they shall proceed to make partition. The commissioners may take testimony, order surveys, and take such other steps as may be necessary to enable them to form a judgment upon the matters before them.

Duties of commissioners.

To make report, and record partitions.

SEC. 5640. The commissioners must report their proceedings, and the partition agreed upon by them, to the Probate Court, in writing, and the court may, for sufficient reasons, set aside the report and commit the same to the same commissioners, or appoint others; and when such report is finally confirmed, a certified copy of the judgment or decree of partition made thereon, attested by the clerk, under the seal of the court, must be recorded in the office of the recorder of the county where the lands lie.

When commissioners to make partition not necessary.

SEC. 5641. When the Probate Court makes a judgment or decree assigning the residue of any estate to one or more persons entitled to the same, it is not necessary to appoint Commissioners to make partition or distribution thereof, unless the parties to whom the assignment is decreed, or some of them, request that such partition be made.

Advancement made to heirs

SEC. 5642. All questions as to advancements made, or alleged to have been made, by the decedent, to his heirs, may be heard and determined by the Probate Court, and must be specified in the decree assigning and distributing the estate; and the final judgment, or decree of the Probate Court, or, in case of appeal, of the District or Supreme Court, is binding on all parties interested in the estate.

Court may appoint agent to take possession for absentees.

SEC. 5643. When any estate is assigned or distributed by a judgment or decree of the court, as provided in this chapter, to any person residing out of and having an agent in this Territory, and it is necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate as well as to act for such absent person in the distribution.

Agent to give bond.

SEC. 5644. The agent must first give a bond to the Probate Judge, to be approved by him, conditioned that he shall faithfully manage and account for the estate. The court approving such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Compensation.

Unclaimed estate, how disposed of.

SEC. 5645. When personal property remains in the hands of the agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it shall be sold under the order of the court; and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the Territorial Treasury. When the payment is made the agent must take from the Treasury duplicate receipts, one of which he must file in the office of the Territorial Controller, and the other in the Probate Court.

Absentees, when real and personal property of, to be sold.

SEC. 5646. The agent must render to the Probate Court appointing him, annually, an account, showing:

1. The value and character of the property received by him, what portion thereof is still on hand, what sold, and for what;
2. The income derived therefrom;
3. The taxes and assessments imposed thereon, for what, and whether paid or unpaid;
4. Expenses incurred in the care, protection and management thereof, and whether paid or unpaid. When filed, the Probate Court may examine witnesses and take proofs in regard to the account; and if satisfied from such accounts and proofs that it will be for the benefit and advantage of the persons interested therein, the court may, by order, direct a sale to be made of the whole or such parts of the real or personal property as shall appear to be proper, and the purchase money to be deposited in the Territorial Treasury.

Liability of agent.

SEC. 5647. The agent is liable on his bond for the care and preservation of the estate while in his hands, and for the payment of the proceeds of the sale as required in the preceding sections, and may be sued thereon by any person interested.

Certificate to claimant.

SEC. 5648. When any person appears and claims the money paid into the Treasury, the Probate Court making the distribution, must inquire into such claim, and being first satisfied of his right thereto, must grant him a certificate to that effect, under its seal; and upon the presentation of the certificate to him, the Controller must draw his warrant on the treasurer for the amount.

Final settlement, decree, and discharge.

SEC. 5649. When the estate has been fully administered, and it is shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court, all the property of the estate, to the parties entitled, and performed all the acts lawfully required of him, the court must make a judgment or decree discharging him from all liability to be incurred thereafter.

Discovery of property.

SEC. 5650. The final settlement of an estate does not prevent the subsequent issuance of letters testamentary, or of administration with the will annexed, whenever other property of the estate is discovered, or whenever it becomes necessary or proper, from any cause, that letters should be again issued.

CHAPTER XII.

OF ORDERS, DECREES, PROCESS, MINUTES, TRIALS, AND APPEALS.

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Orders and decrees to be entered.

SECTION 5655. All orders and decrees made by the Probate Court during its terms, and all orders which the Probate Judge is specially authorized to make out of term time, or at chambers, must be entered at length in the minute book of the court. Upon the close of each term the Judge must sign the minutes.

Publication to be made, how often.

SEC. 5656. When any publication is ordered, such publication must be made daily or otherwise, as often during the prescribed period as the paper is regularly issued, unless otherwise provided in this Title. The court or Judge may, however, order a less number of publications during the period.

Recorded decree or order, to impart notice

SEC. 5657. When it is provided in this Title that any order or decree of a Probate Court or Judge, or a copy thereof, must be recorded in the office of the County Recorder, from the time of filing the same for record, notice is imparted to all persons of the contents thereof.

Citation, how directed, what to contain.

SEC. 5658. Citations must be directed to the person to be cited, signed by the clerk, and issued under the seal of the court, and must contain:

1. The title of the proceeding;
2. A brief statement of the nature of the proceeding;
3. A direction that the person cited appear at a time and place specified.

Citation, how issued.

SEC. 5659. The citation may be issued by the clerk upon the application of any party, without an order of the Judge, except in cases in which such order is by the provisions of this Title expressly required.

Citation, how served.

SEC. 5660. The citation must be served in the same manner as a summons in a civil action.

Personal notice given by citation.

SEC. 5661. When personal notice is required, and no mode of giving it is prescribed in this Title, it must be given by citation.

When citation to be served.

SEC. 5662. When no other time is specially prescribed in this Title, citations must be served at least five days before the return day thereof.

SEC. 5663. When a complete description of the real property of an estate sought to be sold has been given and published in a newspaper, as required in the order to show cause why the sale should not be made, such description need not be published in any subsequent notice of sale, or notice of a petition for the confirmation thereof. It is sufficient to refer to the description contained in the publication of the first notice, as being proved and on file in the court.

One description of real estate sought to be sold, publication of, etc.

SEC. 5664. Except as otherwise provided in this Title, the provisions of Part II of this Code are applicable to and constitute the rules of practice in the proceedings mentioned in this Title.

Rules of practice generally.

SEC. 5665. The provisions of Part II of this Code, relative to new trials and appeals—except in so far as they are inconsistent with the provisions of this Title—apply to the proceedings mentioned in this Title.

New trials and appeals.

SEC. 5666. The appeal must be taken within sixty days after the order, decree, or judgment is entered.

Time of appeal to be taken.

SEC. 5667. All issues of fact joined in the Probate Court must be tried in conformity with the requirements of Chapter II of this Title, in cases of contests of wills, and in all such proceedings the party affirming is plaintiff, and the one denying or avoiding is defendant. Judgments therein on the issues joined, as well as for costs, may be entered and enforced by execution or otherwise, by the Probate Court, as in civil actions.

Issues joined in probate court, how tried, etc.

SEC. 5668. If no jury is demanded, the court must try the issues joined. If, on written demand, a jury is called by either party, and the issues are not sufficiently made up by the written pleadings on file, the court, on due notice, to the opposite party, must settle and frame the issues to be tried, and submit the same, together with the evidence of each party, to the jury, on which they must render a verdict. Either may move for a new trial upon the same grounds and errors, and in like manner, as provided in this Code for civil actions.

Court to try case when no jury is demanded. Issues.

SEC. 5669. At or before the hearing of petitions and contests for the probate of wills, for letters testamentary or of administration; for sales of real estate, and confirmations thereof; settlements, partition, and distribution of estates, setting apart homesteads, and all other proceedings where all the parties interested in the estate are required to be notified thereof, the court may, in its discretion, appoint some competent attorney at law to represent in all such proceedings, the devisees, legatees, heirs, or creditors of the decedent, who are minors and have no general guardian in the county, or who are non-residents of the Territory; and those interested who, though they are neither such minors or non-residents, are unrepresented. The order must specify the names of the parties, so far as known, for whom the attorney is appointed, who is thereby authorized to represent such parties in all such proceedings had subsequent to his appointment. The attorney may receive a fee, to be fixed by the court, for his services, which must be paid out of the funds of the estate as necessary expenses of administration, and upon distribution may be charged to the party represented by the attorney. If, for any cause, it becomes necessary, the

Amended. Attorney for minor or absent heirs, etc., compensation he is to receive.

court may substitute another attorney for the one first appointed, in which case the fee must be proportionately divided. The non-appointment of an attorney will not affect the validity of any of the proceedings.

Decree relative to homestead, and effect thereof.

SEC. 5670. When a judgment or decree is made, setting apart a homestead, confirming a sale, making distribution of real estate, or determining any other matter affecting the title to real estate, a certified copy of the same must be recorded in the office of the Recorder of the county in which the land is situated.

Costs, by whom paid in certain cases.

SEC. 5671. When it is not otherwise prescribed in this Title, the Probate Court, or the District or Supreme Court, on appeal, may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Execution for the costs may issue out of the Probate Court.

Executor, etc., to be removed when committee for contempt.

SEC. 5672. Whenever an executor, administrator, or guardian is committed for contempt, in disobeying any lawful order of the Probate Court or the Judge thereof, and has remained in custody for thirty days without obeying such order or purging himself otherwise of the contempt, the Probate Court may, by order reciting the facts, and without further showing or notice, revoke his letters and appoint some other person entitled thereto, executor, administrator, or guardian in his stead.

Service of process on guardian.

Amendment.

SEC. 5673. Whenever an infant, insane, or incompetent person, has a guardian of his estate residing in this Territory, personal service upon the guardian of any process, notice, or order of the court concerning the estate of a deceased person, in which the ward is interested, is equivalent to the service upon the ward, and it is the duty of the guardian to attend to the interests of the ward in the matter. Such guardian may also appear for his ward and waive any process, notice or order to show cause, which an adult or a person of sound mind might do.

Disposition of life estate on owner's death.

Amendment.

SEC. 5674. If any person has died, or shall hereafter die, who at the time of his death was the owner of a life estate which terminates by reason of the death of such person, any person interested in the property, or in the title thereto, in which such life estate was held, may file in the Probate Court of the county in which the property is situated his verified petition setting forth such facts, and thereupon, and after such notice, by publication or otherwise, as the court may order, the court shall hear such petition and the evidence offered in support thereof, and if, upon such hearing, it shall appear that such life estate of such deceased person absolutely terminated by reason of his death; the court shall make a decree to that effect, and thereupon a certified copy of such decree may be recorded in the office of the County Recorder, and thereafter shall have the same effect as a final decree of distribution so recorded.

CHAPTER XIII.

OF PUBLIC ADMINISTRATOR.

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County treasurers to be ex-officio public administrators. Act of Feb. 9, 1881.

Bond of administrator.

New or additional bond.

SECTION 5680. The County Treasurers of the various counties of this Territory are hereby declared to be ex-officio public administrators in their respective counties. Each Public Administrator shall, before he enters upon the duties of his office, take and file his official oath and execute and file an official bond, conditioned as the bonds of other county officers are, with two good and sufficient sureties, in a sum not less than two thousand dollars; *Provided*, That the Probate Court may, upon reasonable cause therefor shown, require at any time a new official bond, or an additional bond, to be given upon ten days' notice in writing.

What estates to be administered by public administrators.

SEC. 5681. Every Public Administrator duly qualified, must take charge of the estates of persons dying within his county, as follows:

1. Of the estates of decedents for which no administrators are appointed, and which, in consequence thereof, are being wasted, uncared for or lost;
2. Of the estates of decedents who have no known heirs;
3. Of estates ordered into his hands by the Probate Court; and,
4. Of estates upon which letters of administration have been issued to him by the Probate Court, as provided in Chapter III of this Title.

Public administrator to obtain letters, when and how.

Amended.

Bond and oath.

SEC. 5682. Whenever a Public Administrator takes charge of an estate which he is entitled under the provisions of Chapter III, of this Title, to administer without letters of administration being issued, or under order of the court, he must, with all convenient dispatch, procure letters of administration thereon. No notice of application for letters by a Public Administrator is necessary, and his official bond and oath are in lieu of the administrator's bond and oath; but when real estate is ordered to be sold, another bond may be required by the court.

Duty of persons in whose house any stranger dies.

SEC. 5683. Whenever a stranger or person without known heirs, dies intestate in the house or premises of another, the possessor of such premises, or any one knowing the facts, must give immediate notice thereof to the public administrator of the county; and in default of so doing, he is liable for any damage that may be sustained thereby, to be recovered by the Public Administrator, or any party interested.

Must return inventory, etc.

Amended.

SEC. 5684. The Public Administrator must make and return a perfect inventory of all estates taken into his possession, administer and account for the same, according to the provisions of this Title, subject to the control and direction of the Probate Court. When, as shown by the inventory, the estate amounts to less than two hundred and fifty dollars, no notice to creditors or other formal proceedings by the Public Administrator are required, but after the payment of the funeral expenses, the expenses of the last sickness and of administration, the Probate Court must order the residue, if any, converted into money and paid as may be just to such creditors or heirs as may appear, or into the Territorial Treasury as provided in this chapter.

When another person appointed executor, etc., public administrator to deliver up estate.

SEC. 5685. If, at any time, letters testamentary or of administration are regularly granted to any other person on an estate of which the Public Administrator has charge, he must, under the order of the Probate Court, account for, pay, and deliver to the executor or administrator thus appointed, all the money, property, papers, and estate of every kind in his possession or under his control.

Civil officers to give notice of waste to public administrator.

SEC. 5686. All civil officers must inform the Public Administrator of all property known to them, belonging to a decedent, which is liable to loss, injury, or waste, and which, by reason thereof, ought to be in the possession of the Public Administrator.

Suits for property of decedents.

SEC. 5687. The Public Administrator must institute all suits and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

Order to examine party charged with embezzling estate.

SEC. 5688. When the Public Administrator complains to the Probate Judge, on oath, that any person has concealed, embezzled, or disposed of, or has in his possession, any money, goods, property, or effects, to the possession of which such administrator is entitled in his official capacity, the Judge may cite such person to appear before the Probate Court, and may examine him on oath touching the matter of such complaint.

Punishment for refusing to attend.

SEC. 5689. All such interrogatories and answers must be reduced to writing and signed by the party examined, and filed in the Probate Court. If the person so cited refuses to appear and submit to such an examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court may commit him to the county jail, there to remain in close custody until he submits to the order of the court.

Order on public administrator to account.

SEC. 5690. The Probate Court may at any time, order the Public Administrator to account for and deliver all the money and property of an estate in his hand, to the heirs, or to the executors or administrators regularly appointed.

Must publish condition of estate, etc.

SEC. 5691. The Public Administrator must, once in every six months, make to the Probate Judge, under oath, a return of all estates of decedents which have come into his hands, the value of the same, the money which has come into his hands from each estate, and what he has done with it, and the amount of his fees and expenses incurred, and the balance, if any, remaining in his hands.

Moneys, etc., paid into Territorial treasury, when.
Amended.

SEC. 5692. After a final settlement of the affairs of any estate, if there be no heirs or other claimants thereof, the Public Administrator must pay into the Territorial Treasury, all moneys and effects in his hands belonging to the estate, as provided in Chapter XI of this Title for payments by agents.

Administrator not to be interested in payments, etc.

SEC. 5693. The Public Administrator must not be interested in the expenditures of any kind, made on account of any estate he administers; nor must he be associated, in business or otherwise, with any one who is so interested.

When public administrator fails to pay over money, how proceedings are instituted.

SEC. 5694. When it appears, that any money remains in the hands of the Public Administrator (after a final settlement of the estate) unclaimed, which should be paid over to the Territorial Treasurer, the Probate Judge must order the same to be paid over; and, on failure of the Public Administrator to comply with the order within ten days after the same is made, the District Attorney for the county must immediately institute the requisite legal proceedings against the Public Administrator for a judgment against him and the sureties on his official bond, in the amount of money so withheld, and costs.

Preceding chapters applicable to public administrator.

SEC. 5695. When no direction is given in this chapter for the government or guidance of a Public Administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of the preceding chapters of this Title must govern.

CHAPTER XIV.

SUCCESSION.

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Succession defined.

SECTION 5700. Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Succession to estates of intestates.
Amended.

SEC. 5701. The property both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the Probate Court, and to the possession of any administrator appointed by that court for the purposes of administration.

Succession to and distribution of property.
Amended.

SEC. 5702. When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this Code, subject to the payment of his debts, in the following manner:

1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child in equal shares

to the surviving husband or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living or to the child living, and the issue of the deceased child or children by right of representation.

2. If the decedent leave no issue, the estate goes, one-half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either be dead, the whole of said half goes to the other; if there be no father or mother, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation. If the decedent leave no issue, nor husband, nor wife, the estate must go to his father and mother, in equal shares, or if either be dead, then to the other.

3. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister by right of representation.

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, nor sister, the whole estate goes to the surviving husband or wife.

5. If the decedent leave neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

6. If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

7. If at the death of such child, who dies under age, not having been married, all the other children of his parents, are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children of the same parent; and if all the issues are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

8. If the decedent be a widow or widower, and leave no kindred, and the estate, or any portion thereof, was common property of such decedent, and his or her deceased spouse, while such spouse was living, such common property shall go to the father of such deceased spouse, or if he be dead, to the mother. If there be no father nor mother, then such property shall go to the brothers and sisters of such deceased spouse, in equal shares, and to the lawful issue of any deceased brother or sister of such deceased spouse, by right of representation.

9. If the decedent leave no husband, wife, or kindred, and there be no heirs to take his estate, or any portion thereof, under subdivision eight, of this section, the same shall be paid into the Territorial Treasury for the support of common schools.

Illegitimate children, when to inherit.

SEC. 5703. Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part as the case may be, in the same manner as if he had been born in lawful wedlock, but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate and without issue, the others inherit his estate and are heirs as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

Mother is successor to illegitimate child.

SEC. 5704. If an illegitimate child who has not been acknowledged or adopted by his father, dies intestate without lawful issue, his estate goes to his mother, or in case of her decease, to her heirs at law.

Relatives of the half blood.

SEC. 5705. The decrees of kindred are completed according to the rules of the civil law. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

Advancements constitute part of distributive share.

SEC. 5706. Any estate, real or personal, given by the decedent in his lifetime, as an advancement to any child or other lineal descendant, is a part of the estate of the decedent for the purpose of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

Advancements, when too much, or not enough.

SEC. 5707. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

What are advancements.

SEC. 5708. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such by the child or other successor or heir.

Value of advancements, how determined.

SEC. 5709. If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise it must be estimated according to its value when given, as nearly as the same can be ascertained.

When heirs, advanced to, die before decedent.

SEC. 5710. If any child or other lineal descendant receiving advancement dies before the decedent leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof, must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

Inheritance of husband and wife from each other.

SEC. 5711. The provisions of the preceding sections of this chapter, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

Community property on death of wife. Act of Feb. 21, 1879.

SEC. 5712. Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, except such portion thereof as may have been set apart to her, by judicial decree, for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition, goes to her descendants, or heirs, exclusive of her husband.

Distribution of common property on death of husband. Act of Feb. 21, 1879.

SEC. 5713. Upon the death of the husband, one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants, equally, if such descendants are in the same degree of kindred to the decedent; otherwise, according to the right of representation; and in the absence of both such disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

Inheritance by representation.

SEC. 5714. Inheritance or succession "by right of representation" takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Aliens may inherit, when, and how. N. S.

SEC. 5715. Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this Title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner, can take, by succession, unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

Succession not claimed, what to be done.
New section.

SEC. 5716. When succession is not claimed as provided in the preceding section, the District Court, on information, must direct the Attorney General to reduce the property to his or the possession of the Territory, or to cause the same to be sold, and the same, or the proceeds thereof, to be deposited in the Territorial Treasury for the benefit of such non-resident foreigner, or his legal representative, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the Territorial Controller and Treasurer, is produced that he is entitled to succeed thereto.

When the property and estate goes to the school fund.

SEC. 5717. When so claimed, the evidence and the joint order of the Controller and Treasurer, must be filed by the Treasurer as his voucher, and the property delivered or the proceeds paid to the claimant on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent is placed by the Territorial Treasurer, to the credit of the school fund.

CHAPTER XV.

OF WILLS.

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Who may make a will.

SECTION 5725. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in Chapter XIV of this Title, being chargeable in both cases with the payment of all the decedent's debts, as provided in this Code.

Separate property of married woman.

SEC. 5726. A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be attested, witnessed, and proved in like manner as all other wills.

Written will, how to be executed.

SEC. 5727. Every will, other than a nuncupative will, must be in writing, and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. The subscription must be made in the presence of the attesting witnesses or be acknowledged by the testator to them, to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence.

Definition of an olographic will.

SEC. 5728. An olographic will is one that is entirely written, dated and signed, by the hand of the testator himself. It is subject to no other form, and may be made in or out of this Territory, and need not be witnessed.

Witness to add residence.

SEC. 5729. A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Competency of subscribing witness.

SEC. 5730. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

Written will, how revoked.

SEC. 5731. Except in the cases in this Chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Evidence of revocation.

SEC. 5732. When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction, must be proved by two witnesses.

Revocation of duplicate.

SEC. 5733. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

Antecedent not revived by revocation of subsequent will.

SEC. 5734. If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will is duly republished.

Revocation by marriage and birth of issue.

SEC. 5735. If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Effect of marriage of a man on his will.

SEC. 5736. If, after making a will the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

Marriage of woman, effect of on will.

SEC. 5737. A will, executed by an unmarried woman, is revoked by her subsequent marriage, and is not revived by the death of her husband.

Contract of sale not a revocation.

SEC. 5738. An agreement made by a testator for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes the by will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

Mortgage not a revocation of will.

SEC. 5739. A charge or incumbrance upon any estate for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass, subject to such charge or incumbrance.

Conveyance, when not a revocation.

SEC. 5740. A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

When it is a revocation.

SEC. 5741. If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

Codicils, revocation of.

SEC. 5742. The revocation of a will revokes all its codicils.

Afterborn child, unprovided for, to succeed.

SEC. 5743. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the intestator had died intestate.

Children or issue of children of testator, unprovided for by will.

SEC. 5744. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

Share of afterborn child, out of what part of estate to be paid.

SEC. 5745. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Advancement during lifetime of testator.

SEC. 5746. If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

Death of devisee.

SEC. 5747. When any estate is devised to any child or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will in the same manner as the devisee would have done had he survived the testator.

Devisees of land, how construed.

SEC. 5748. Every devisee of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

Will passes after acquired estates.

SEC. 5749. Any estate, right or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if the title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

Restriction of power to devise to charitable uses.

SEC. 5750. No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them shall be valid; *Provided*, That no such devises or bequests shall collectively exceed one-third of the estate of the testator leaving lineal descendants, and in such case, a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee next of kin, or heirs, according to law.

Property of intestate chargeable with debts.

SEC. 5751. When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this Code.

Order of, resort to property for payment of debts.

SEC. 5752. The property of a testator, except as otherwise specially provided for in this Code, must be resorted to for the payment of debts in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts;
2. Property not disposed of by the will;
3. Property which is devised or bequeathed to a residuary legatee;
4. Property which is not specially devised or bequeathed; and,

5. All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for.

SEC. 5753. The property of a testator, except as otherwise specially provided for in this Code, must be resorted to for the payment of legacies, in the following order: Same, payment of legacies.

1. The property which is expressly appropriated by the will for the payment of the legacies;
2. Property not disposed of by the will;
3. Property which is devised or bequeathed to a residuary legatee;
4. Property which is (not) specifically devised or bequeathed.

SEC. 5754. Legacies to husband, widow, or kindred of any class are chargeable only after legacies to persons not related to the testator. Same.

SEC. 5755. In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the judge of the Probate Court to sell the property devised and bequeathed, in the cases herein provided. Specific devises and legacies.

SEC. 5756. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease. Legacies, when due.

SEC. 5757. No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate. Executor not to act till qualified.

SEC. 5758. The provisions of this Title in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect. Provisions as to revocations.

SEC. 5759. The provisions of this Title do not impair the validity of the execution of any will made before it takes effect, or affect the construction of any such will. Execution and construction of prior wills not affected.

SEC. 5760. Except as otherwise provided, the validity and interpretation of wills are governed, when relating to real property within this Territory, by the law of this Territory; when relating to personal property, by the law of the testator's domicile. The law of what place applies.

CHAPTER XVI.

OF GUARDIAN AND WARD.

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Probate court to appoint guardians, when.
Amended.

SECTION 5770. The Probate Court of each county, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either of them, of minors who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the county, or who reside without the Territory and have estate within the county. Such appointment may be made on the petition of a relative or other person on behalf of the minor, or on the petition of the minor, if fourteen years of age. Before making such appointment, the court must cause such notice as such court deems reasonable to any person having the care of such minor, and to such relatives of the minor in the county as the court may deem proper.

When and when not minor may nominate guardian.

SEC. 5771. If the minor is under the age of fourteen years, the Probate Court may nominate and appoint his guardian. If he is above the age of fourteen years, he may nominate his own guardian, who, if approved by the court, must be appointed accordingly.

When judge may make appointment.

SEC. 5772. If the guardian nominated by the minor is not approved by the court, or if the minor resides out of the Territory, or if, after being duly cited by the court, he neglects for ten days to nominate a suitable person, the court may nominate and appoint the guardian, in the same manner as if the minor were under the age of fourteen years.

Nomination by minors after arriving at fourteen.

SEC. 5773. When a guardian has been appointed by the court for a minor under the age of fourteen, the minor, at any time after he attains that age, may appoint his own guardian, subject to the approval of the Probate Court.

Father or mother entitled to guardianship.

SEC. 5774. The father of the minor, if living, and in case of his decease the mother, while she remains unmarried, being themselves respectively competent to transact their own business and not otherwise unsuitable, must be entitled to the guardianship of the minor.

Minor having no parents.

SEC. 5775. If the minor has no father or mother living, competent to have the custody and care of his education, the guardian appointed shall have the same.

Powers and duties of guardian.

SEC. 5776. Every guardian appointed shall have the custody and care of the education of the minor, and the care and management of his estate, until such minor arrives at the age of majority or marries, or until the guardian is legally discharged.

Bond of guardian, conditions of.

SEC. 5777. Before the order appointing any person guardian under this chapter takes effect, and before letters issue, the Judge must require of such person a bond to the minor, with sufficient sureties, to be approved by the Judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law; and the following conditions shall form a part of such bond, without being expressed therein:

1. To make an inventory of all the estate, real and personal, of his ward that comes to his possession or knowledge, and to return the same within such time as the Judge may order;
2. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward;
3. To render an account, on oath, of the property, estate, and moneys of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the court directs; and at the expiration of his trust to settle his accounts with the court or with the ward, if he be of full age, or his legal representatives, and to pay over and deliver all the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto. Upon filing the bond, duly approved, letters of guardianship must issue to the person appointed. In form, the letters of guardianship must be substantially the same as letters of administration; and the oath of the guardian must be indorsed thereon that he will perform the duties of his office, as such guardian, according to law.

Probate judge may insert conditions in order appointing guardian.

SEC. 5778. When any person is appointed guardian of a minor, the Probate Court may, with the consent of such person, insert in the order of appointment conditions not otherwise obligatory, providing for the care, treatment, education, and welfare of the minor. The performance of such conditions is a part of the duties of the guardian, for the faithful performance of which he and the sureties on his bond are responsible.

Letters of guardianship, and bond of.

SEC. 5779. All letters of guardianship issued, and all guardians' bonds executed under the provisions of this chapter, with the affidavits and certificates thereon, must be recorded by the Clerk of the Probate Court having jurisdiction of the persons and estates of the wards.

Maintenance of minor out of income of his own property.

SEC. 5780. If any minor, having a father living, has property, the income of which is sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the education and maintenance of such minor may be defrayed out of the income of his own property, in whole or in part, as judged reasonable, and must be directed by the Probate Court; and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Appointment of guardian by will or deed.

Amendment.

SEC. 5781. A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

1. If the child be legitimate, by the father, with the written consent of the mother, or by either parent, if the other be dead or incapable of consent;

2. If the child be illegitimate, by the mother.

Guardian to give bond, powers limited.

SEC. 5782. Every testamentary guardian must give bond and qualify, and has the same powers and must perform the same duties, with regard to the person and estate of his ward, as guardians appointed by the Probate Court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed.

Power of courts to appoint guardians.

SEC. 5783. Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian to defend the interests of any minor interested in any suit or matter pending therein.

Guardians of insane and other incompetent persons.

SEC. 5784. When it is represented to the Probate Judge, upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the Judge must cause a notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing.

Appointment by probate judge after hearing.

SEC. 5785. If, after a full hearing and examination upon such petition, it appears to the Probate Court that the person in question is incapable of taking care of himself and managing his property, the court must appoint a guardian of his person and estate, with the powers and duties in this chapter specified.

Powers and duties of such guardians.

SEC. 5786. Every guardian appointed, as provided in the preceding section, has the care and custody of the person of his ward, and the management of all his estate until such guardian is legally discharged; and he must give bond to such ward in like manner and with like conditions as before prescribed with respect to the guardian of a minor.

Proceeding for restoration of insane, etc. Amendment.

SEC. 5787. Any person who has been declared insane or incompetent, or the guardian or any relative of such person, or any friend may apply by petition, to the Probate Court of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane or competent.

Upon receiving the petition the court must appoint a day for a hearing before the court, and if the petitioner request it, shall order an investigation before a jury, which shall be summoned and impaneled in the same manner as juries are summoned and impaneled in civil actions. The court shall cause notice of the trial to be given to the guardian of the person so declared insane or incompetent, if there be a guardian, and to his or her husband or wife, if there be one, and to his or her father or mother, if living in the county. On the trial the guardian or relative of the person so declared insane or incompetent, and, in the discretion of the court, any other person may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the court on its own motion. If it be found that the person be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease.

Guardian to pay debts of ward out of ward's estate.

SEC. 5788. Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from the ward, out of his personal estate and the income of his real estate, if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and depositing the same in the manner provided in this Title for the sale of real estate of decedents.

Guardian to recover debts due his ward.

SEC. 5789. Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the Probate Judge, compound for the same and give discharges to the debtors on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person is appointed for that purpose.

Guardian to manage his estate, maintain ward, and sell real estate.

SEC. 5790. Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, as far as may be necessary, for the comfortable and suitable maintenance, support and education of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the court therefor, as provided, and must apply the proceeds of such sale, as far as may be necessary, for the maintenance and support of the ward and his family, if there be any.

Maintenance, support and education of ward, how enforced.

SEC. 5791. When a guardian has advanced, for the necessary maintenance, support, or education of his ward, an amount not disproportionate to the value of his estate or his condition of life, and the same is made to appear to the satisfaction of the court by proper vouchers and proofs, the guardian must be allowed credit therefor in his settlements.

Whenever a guardian fails, neglects, or refuses to furnish suitable and necessary maintenance, support or education for his ward, the court may order him to do so, and enforce such order by proper process. Whenever any third person, at his request, supplies a ward with such suitable and necessary maintenance, support, or education, and it is shown to have been done after refusal or neglect of the guardian to supply the same, the court may direct the guardian to pay therefor out of the estate, and enforce such payment by due process.

May assent to a partition of real estate.

SEC. 5792. The guardian may join in and assent to a partition of the real estate of the ward, wherever such assent may be given by any person.

Guardian to return inventory.

SEC. 5793. Every guardian must return to the Probate Court an inventory of the estate of his ward within three months after his appointment, and annually thereafter. The Probate Court may, upon application for that purpose by any person, compel the guardian to render an account to the Probate Court of the estate of his ward. The inventories and accounts so to be returned or rendered must be sworn to by the guardian. All the estate of the ward described in the first inventory must be appraised by appraisers appointed, sworn, and acting in the manner provided for regulating the settlement of the estate of decedents. Such inventory, with the appraisement of the property therein described, must be recorded by the Clerk of the Probate Court in a proper book kept in his office for that purpose. Whenever any other property of the estate of any ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward, or for his benefit, the like proceedings must be had for the return and appraisement thereof that are herein provided in relation to the first inventory and return.

Appraisers to be appointed.

Like proceedings when other property acquired.

Settlements of guardians.

SEC. 5794. The guardian must, upon the expiration of a year from the time of his appointment, and as often thereafter as he may be required, present his account to the Probate Court for settlement and allowance.

Allowance of accounts.

SEC. 5795. When an account is rendered by two or more joint guardians, the Probate Judge may, in his discretion, allow the same upon the oath of any of them.

Expenses and compensation of guardian.

SEC. 5796. Every guardian must be allowed the amount of his reasonable expenses incurred in the execution of his trust, and he must also have such compensation for his services as the court in which his accounts are settled deems just and reasonable.

May sell property in certain cases.

SEC. 5797. When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, his guardian may sell his real or personal estate for that purpose, upon obtaining an order therefor.

Sale of real estate to be made upon order of the court.

SEC. 5798. When it appears to the satisfaction of the court, upon the petition of the guardian, that for the benefit of his ward his real estate, or some part thereof, should be sold, and the proceeds thereof put out at interest, or invested in some productive stock, or in the improvement or security of any other real estate of the ward, his guardian may sell the same for such purpose, upon obtaining an order therefor.

Application of proceeds of sales.

SEC. 5799. If the estate is sold for the purposes mentioned in this chapter, the guardian must apply the proceeds of the sale to such purposes, as far as necessary, and put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital is wanted for the maintenance of the ward and his family, or the education of his children, or for the education of the ward when a minor, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

Investments of proceeds of sales.

SEC. 5800. If the estate is sold for the purpose of putting out or investing the proceeds, the guardian must make the investment according to his best judgment, or in pursuance of any order that may be made by the Probate Court.

Order for sale, how obtained.

SEC. 5801. To obtain an order for such sale, the guardian must present to the Probate Court of the county in which he was appointed guardian, a verified petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale.

Notice to next of kin, how given.

SEC. 5802. If it appears to the court or Judge, from the petition, that it is necessary or would be beneficial to the ward that the real estate, or some part of it, should be sold, or that the real and personal estate should be sold, the court or Judge must thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before the court, at a time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appears that it is necessary or would be beneficial to the ward to sell the personal estate or some part of it, the court must order the sale to be made.

Copy of order to be served, etc.

SEC. 5803. A copy of the order must be personally served on the next of kin of the ward, and on all persons interested in the estate, at least fourteen days before the hearing of the petition, or must be published at least three successive weeks in a newspaper printed in the county, if there be none printed in the county, then in such newspaper as may be specified by the court or Judge in the order.

If written consent to making the order of sale is subscribed by all persons interested therein, and the next of kin, notice need not be served or published.

Hearing of application.

SEC. 5804. The Probate Court, at the time and place appointed in the order, or such other time to which the hearing is postponed, upon proof of the service or publication of the order, must hear and examine the proofs and allegations of the petitioner and of the next of kin, and of all other persons interested in the estate who oppose the application.

Who may be examined on such hearing.

SEC. 5805. On the hearing the guardian may be examined on oath, and witnesses may be produced and examined by either party, and process to compel their attendance and testimony may be issued by the Probate

Court or Judge, in the same manner and with like effect as in other cases provided for in this Title.

Costs to be awarded, to whom.

SEC. 5806. If any person appears and objects to the granting of any order prayed for under the provisions of this chapter, and it appears to the court that either the petition or the objection thereto is sustained, the court may, in granting or refusing the order, award costs to the party prevailing, and enforce the payment thereof.

Order of sale, to specify what.

SEC. 5807. If, after a full examination, it appears necessary, or for the benefit of the ward, that his real estate, or some part thereof should be sold, the Court may grant an order therefor, specifying therein, the causes or reasons why the sale is necessary or beneficial, and may, if the same has been prayed for in the petition, order such sale to be made either at public or private sale.

Bond before selling.
Amended.

SEC. 5808. Every guardian authorized to sell real estate must, before the sale, give bond to the ward, with sufficient surety, to be approved by the court, or a judge thereof, with condition to sell the same in the manner, and to account for the proceeds of the sale, as provided for in this chapter, and Chapter VII of this Title.

Proceedings for sale of property.

SEC. 5809. All the proceedings under petition of guardians for sales of property of their wards, giving notice and the hearing of such petitions, granting or refusing the order of sale, directing the sale to be made at public or private sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, accounting and the settlement of account, must be had and made as required by the provisions of this Title concerning estates of decedents, unless otherwise specially provided in this chapter.

Limit of order of sale.

SEC. 5810. No order of sale granted in pursuance of this chapter continues in force more than one year after granting the same, without a sale being had.

Conditions of sales of real estate of minor heirs.
Bond and mortgage to be given for deferred payments.

SEC. 5811. All sales of real estate of wards must be for cash, or for part cash and part deferred payments, not to exceed three years, bearing date from date of sale, as, in the discretion of the Probate Judge, is most beneficial to the ward. Guardians making sales must demand and receive from the purchasers bond and mortgage on the real estate sold, with such additional security as the Judge deems necessary and sufficient to secure the faithful payment of the deferred payments and the interest thereon.

Probate court may order investment of money of ward.

SEC. 5812. The Probate Court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the Probate Judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein; and the Probate Court may make such other orders and give such directions as are needful for the management, investment, and disposition of the estate and effects, as circumstances require.

Guardians of non-resident persons.

SEC. 5813. When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this Territory, and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the Probate Court of any county in which there is any estate of such absent person, for the appointment of a guardian; and if, after notice given to all interested, in such manner as the Judge orders, and a full hearing and examination, it appears proper, a guardian for such absent person may be appointed.

Powers and duties of guardian.

SEC. 5814. Every guardian, appointed under the preceding section, has the same powers and performs the same duties, with respect to the estate of the ward found within this Territory, and with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

Guardians to give bonds.

SEC. 5815. Every guardian must give bond to the ward, in the manner and with the like conditions as hereinbefore provided for other guardians, except that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, must be confined to such estate and effects as come to his hands in this Territory.

To what guardianship shall extend.

SEC. 5816. The guardianship which is first lawfully granted, of any person residing without this Territory, extends to all the estate of the ward within the same, and excludes the jurisdiction of the Probate Court of every other county.

Removal of non-resident ward's property.

SEC. 5817. When the guardian and ward are both nonresidents, and the ward is entitled to property in this Territory which may be removed to a State, another Territory, or foreign country without conflict with any restriction or limitation thereupon, or impairing the right of the ward thereto, such property may be removed to the Territory, State or foreign country of the residence of the ward, upon the application of the guardian to the Probate Court of the county in which the estate of the ward, or the principal part thereof, is situated.

Proceedings on such removal.

SEC. 5818. The application must be made upon ten days' notice to the resident executor, administrator, or guardian, if there be such, and upon such application, the non-resident guardian must produce and file a certificate under the hand of the clerk, and seal of the court from which his appointment was derived, showing:

1. A transcript of the record of his appointment;
2. That he has entered upon the discharge of his duties;
3. That he is entitled by the laws of the State or Territory of his appointment to the possession of the estate of the ward.

Upon such application, unless good cause to the contrary is shown, the Probate Court must make an order, granting to such guardian leave to take and remove the property of his ward to the state or place of his residence, which is authority to him to sue for and receive the same in his own name, for the use and benefit of his ward.

Discharge of person in possession.

SEC. 5819. Such order is a discharge of the executor, administrator, local guardian, or other person in whose possession the property may be at the time the order is made, on filing with the Probate Court the receipt therefor of the foreign guardian of such absent ward.

Examination of persons suspected of defrauding wards, etc.

SEC. 5820. Upon complaint made to him by any guardian, ward, creditor, or other person interested in the estate, or having a prospective interest therein as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away, any of the money, goods, or effects, or an instrument in writing, belonging to the ward or his estate, the Probate Judge may cite such suspected person to appear before him, and may examine and proceed with him on such charge in the manner provided in this Title with respect to persons suspected of, and charged with concealing or embezzling the effects of a decedent.

Removal and resignation of guardian.

Surrender of estate.

SEC. 5821. When a guardian, appointed either by the testator or the Probate Court, becomes insane or otherwise incapable of discharging his trust, or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days after being required to render an account or make a return, the Probate Court may, upon such notice to the guardian as the court may require, remove him and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same; and upon the resignation or removal of a guardian, as herein provided, the Probate Court or the Judge thereof may appoint another in the place of the guardian who has resigned or has been removed.

Guardianship, how terminated.

SEC. 5822. The marriage of a minor ward terminates the guardianship, and the guardian of an insane or other person may be discharged by the Probate Court when it appears to him, on the application of the ward, or otherwise, that the guardianship is no longer necessary.

New bond when required.

SEC. 5823. The Probate Judge may require a new bond to be given by a guardian whenever he deems it necessary, and may discharge the existing sureties from further liability, after due notice given as he may direct, when it shall appear that no injury can result therefrom to those interested in the estate.

Guardian's bond to be filed.

SEC. 5824. Every bond given by a guardian must be filed and preserved in the office of the Clerk of the Probate Court of the county; and in case of a breach of a condition thereof, may be prosecuted for the use and benefit of the ward or of any person interested in the estate.

Limitation of actions on guardian's bond.

SEC. 5825. No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three years from the discharge or removal of the guardian; but if at the time of such discharge, the person entitled to bring such action is under any legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

Limitation of actions for the recovery of property sold.

SEC. 5826. No action for the recovery of any estate sold by a guardian can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal thereof.

More than one guardian may be appointed.

SEC. 5827. The court, in its discretion, whenever necessary, may appoint more than one guardian of any person subject to guardianship, who must give bond and be governed and liable in all respects as a sole guardian.

Power of probate judge in chambers.

SEC. 5828. The power conferred upon the Probate Judge in relation to guardians and wards, may be exercised by him at chambers, or as the act of the Probate Court, when holding such court; and any order appointing a guardian must be entered as, and become a decree of the court. The provisions of this Title relative to the estates of decedents, so far as they relate to the practice in the Probate or District Courts, apply to proceedings under this chapter.

Certain provisions apply to guardians. Amended.

SEC. 5829. The provisions as to qualification and justification of sureties to undertakings, are hereby declared to apply to guardians appointed by the court, and to the bonds taken, or to be taken, from such guardians, and to the sureties on such bonds.

TITLE XI.

OF SOLE TRADERS.

SECTION
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5852. Petition, what to contain and when filed.
5853. May have five hundred dollars of community or husband's property.
5854. Who may oppose it, and how.
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5858. Rights and liabilities of sole traders.
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Who may become sole traders.

SECTION 5850. A married woman may become a sole trader by the judgment of the District Court of the county in which she has resided for six months next preceding the application.

Notice, how given and what to contain.

SEC. 5851. A person intending to make application to become a sole trader, must publish notice of such intention in a newspaper published in the county, or if none, then in a newspaper published in an adjoining county, for four successive weeks. The notice must specify the term, and the day upon which the application will be made, the nature and place of the business proposed to be conducted by her, and the name of her husband.

Petition, what to contain, and when filed.

SEC. 5852. Ten days prior to the day named in the notice, the applicant must file a verified petition, setting forth:

1. That the application is made in good faith, to enable the applicant to support herself, or herself and others dependent upon her, giving their names and relation;
2. The fact of insufficient support from her husband, and the causes thereof, if known;
3. Any other grounds of application which are good causes for a divorce, with the reason why a divorce is not sought; and,
4. The nature of the business proposed to be conducted, and the capital to be invested therein, if any, and the sources from which it is derived.

May have $500 of community or husband's property.

SEC. 5853. The applicant may invest in the business proposed to be, a sum derived from the community property, or of the separate property of the husband, not exceeding five hundred dollars.

Who may oppose it and how.

SEC. 5854. Any creditor of the husband may oppose the application, by filing in the court (prior to the day named in the notice) a written opposition verified, containing either:

1. A specified denial of the truth of any material allegation of the petition; or setting forth,
2. That the application is made for the purpose of defrauding the opponent; or,
3. That the application is made to prevent, or will prevent, him from collecting his debt.

Trial or hearing.

SEC. 5855. On the day named in the notice, or on such other day to which the hearing may be postponed by the court, the applicant must make proof of publication of the notice hereinbefore required, and the issues of fact joined, if any, must be tried as in other cases; if no issues are joined, the court must hear the proofs of the applicant, and find the facts in accordance therewith.

SEC. 5856. If the facts found sustain the petition, the court must render judgment, authorizing the applicant to carry on in her own name and on her own account, the business specified in the notice and petition.

Decree, what it must be.

SEC. 5857. The sole trader must make, and file with the Clerk of the court, an affidavit, in the following form: "I, A. B., do, in the presence of Almighty God, solemnly swear that this application was made in good faith, for the purpose of enabling me to support myself (and any dependent, such as husband, parent, sister, child, or the like, naming them, if any), and not with any view to defraud, delay or hinder any creditor, or creditors of my husband; and that, of the moneys so to be used by me in business, not more than five hundred dollars have come, either directly or indirectly, from my husband. So help me God."

Oath, copy of order to be recorded.

A certified copy of the decree, with this oath indorsed thereon, must be recorded in the office of the recorder of the county where the business is to be carried on, in a book to be kept for such purpose.

SEC. 5858. When the judgment is made and entered, and a copy thereof, with the affidavit provided for in the last section duly recorded, the person therein named is entitled to carry on the business specified, in her own name, and the property, revenues, moneys, and credits so by her invested, and the profits thereof, belong exclusively to her, and are not liable for any debts of her husband; and she thereafter has all the privileges of and is liable to all legal processes provided for debtors and creditors, and may sue and be sued alone, without being joined with her husband; *Provided, however*, That she shall not be at liberty to carry on said business in any other county than that named in the published notice, until she has recorded in such other county a copy of said judgment and affidavit.

Rights and liabilities of sole traders.

SEC. 5859. A married woman who is adjudged a sole trader is responsible and liable for the maintenance of her minor children.

Sole trader must maintain her children.

SEC. 5860. The husband of a sole trader is not liable for any debts contracted by her in the course of her sole trader's business, unless contracted upon his written consent.

Husband of sole trader not liable for debts.

TITLE XII.

OF PROCEEDINGS IN INSOLVENCY.

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Insolvent may be discharged from debts.

SECTION 5875. Every insolvent debtor may, upon compliance with the provisions of this Title, be discharged from his debts and liabilities.

Petition

SEC. 5876. An insolvent debtor, owing debts exceeding in amount the sum of three hundred dollars, may apply by petition to the District Court of the county, in which he has resided for six months next preceding the filing of his petition, to be discharged from his debts and liabilities. In his petition he must set forth his place of residence, his inability to pay all his debts in full, his unwillingness to surrender all his estate and effects for the benefit of his creditors, and his desire to obtain a discharge from his debts and liabilities, and must annex thereto a schedule and inventory, and valuation, in compliance with the provisions of this Title. The filing of such petition is an act of insolvency, and thereupon such petitioner must be adjudged an insolvent debtor.

Schedule.

SEC. 5877. Said schedule must contain a full and true statement of all his debts and liabilities, exhibiting, to the best of his knowledge and belief, to whom said debts or liabilities are due, the place of residence of his creditors, and the sum due to each; the nature of the indebtedness or demand, whether founded on written security, obligation, contract or otherwise; the true cause and consideration thereof, and the time and place when and where said indebtedness accrued, and a statement of any existing pledge, lien, mortgage, judgment, or other security for the payment of the same.

SEC. 5878. Said inventory must contain an accurate description of all the estate, both real and personal, of the petitioner, including his homestead, if any, and all property exempt by law from execution, and where the same is situated, and all incumbrances thereon. Inventory.

SEC. 5879. The petition, schedule, and inventory must be verified by the affidavit of the petitioner, annexed thereto, and must be in form substantially as follows: Affidavit.

I, ——————, do solemnly swear that the schedule and inventory now delivered by me contain a full, perfect and true discovery of all the estate, real, personal and mixed, goods and effects, to me in any way belonging; all such debts as are to me owing, or to any person or persons in trust for me, and all securities and contracts, and contracts whereby any money may hereafter become payable, or any benefit or advantage accrue to me or to my use, or to any other person or persons in trust for me; that I have no lands, money, stock or estate, reversion or expectancy, beside that set forth in my schedule and inventory; that I have in no instance created or acknowledged a debt for a greater sum than I honestly and truly owe; that I have not, directly or indirectly, sold or otherwise disposed of or concealed, any part of my property, effects or contracts; that I have not, in contemplation of insolvency, in any way compounded with my creditors whereby to secure the same, or to receive, or to expect any profit or advantage therefrom, or to defraud or deceive any creditor to whom I am indebted in any manner. So help me God.

SEC. 5880. Upon receiving and filing such petition, schedule and inventory, the court, or the Judge thereof, must make an order declaring the petitioner insolvent, and directing the Sheriff of the county to take possession of all the estate, real and personal, of the debtor, except such as may be by law exempt from execution, and of all his deeds, vouchers, books of account and papers, and to keep the same safely until the appointment of an assignee. Such order must further forbid the payment of any debts and the delivery of any property belonging to such debtor, to him, or for his use, and the transfer of any property by him; and must further appoint a time and place for a meeting of the creditors to prove their debts and choose one or more assignees of the estate, which must not be less than thirty days after the making of said order, and shall designate a newspaper or newspapers of general circulation in which publication thereof must be made. Upon the granting of said order, all proceedings against the said insolvent are stayed. Order of transfer of property and stay of proceedings.

SEC. 5881. A copy of said order must immediately be published by the Clerk of said Court, in the newspaper or newspapers designated therein, as often as the newspaper is printed before the meeting of creditors, and be served by the clerk forthwith by United States mail, postage prepaid, or personally, on all creditors named in the schedule. The order of adjudication must direct the publication thereof in a newspaper published in the county in which the petition is filed, if there be one, and if there be none, in a newspaper published nearest to such county; *Provided,* That no order of adjudication must be entered unless there first be depos- Publication.

ited with the clerk in addition to the usual cost of commencing said proceedings, a sum of money sufficient to defray the cost of the publications ordered by the court, and ten cents for each copy to be mailed to, or served on, the creditors, which latter sum is hereby constituted the legal fee of the clerk for the mailing or service required in this section.

Election of assignee bond.

SEC. 5882. At a meeting of the creditors, in open court, those having proven their claims, by filing a verified statement showing the amount, nature, and security, if any, must proceed to the election of one assignee. The assignee must be a resident of the county where the insolvent resides, or where he has carried on his business. In electing an assignee, the opinion of the majority in amount of claims must prevail. The Clerk of the court must keep a minute of the deliberations of said creditors, and of the election and appointment of an assignee. The assignee must file, within five days, unless the time be extended by the court or Judge, with the clerk, a bond, in an amount to be fixed by the court, or Judge, of the Territory of Idaho, with two or more sufficient sureties approved by the court, or Judge, and conditioned for the faithful performance of the duties devolving upon him. The bond is not void upon the first recovery, but may be sued upon from time to time by any creditor aggrieved, in his own name, until the whole penalty is exhausted. The sureties on such bond may be required to justify upon the application of any party interested, in the same manner as bail upon arrest in civil cases.

Assignee, when appointed.

SEC. 5883. If, on the day appointed for the meeting, the creditors to not attend, or refuse to elect an assignee, or if after election, the assignee fails to qualify within the proper time, the court or Judge, before whom the said meeting takes place, may appoint an assignee and fix the amount of his bond.

Assignment

SEC. 5884. As soon as the assignee is appointed and qualified, the Clerk of the Court must, by an instrument under his hand and seal of the court, assign and convey to the assignee all the estate, real and personal, of the debtor, with all his deeds, books, and papers relating thereto, and such assignment relates back to the commencement of the proceedings in insolvency, and by operation of law vests the title to all such property and estate, both real and personal, in the assignee. Such assignment vests in the assignee all the estate of the insolvent debtor not exempt by law from execution, subject to the lawful and *bona fide* liens and incumbrances thereon.

Authority of assignee.

SEC. 5885. The assignee has the right to recover all estate, debts, and effects of said insolvent. If, at the time of the commencement of proceedings in insolvency, an action is pending in the name of the debtor, for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee must be allowed and admitted to prosecute the action in like manner and with like effect as if it had been originally commenced by him. In suits prosecuted by the assignee, a certified copy of the assignment made to him is conclusive evidence of his authority to sue.

SEC. 5886. The assignee must, within one month after the making of the assignment to him, cause the same to be recorded in every county within this Territory, where any lands owned by the debtor are situated, and the record of such assignment, or a duly certified copy thereof, is conclusive evidence thereof in all courts.

Recording assignments.

SEC. 5887. Any assignee may at any time, by writing filed in court, resign his appointment, having first settled his accounts, and delivered up all the estate to such successor as the court or Judge may appoint; *Provided*, That if in the discretion of the court or Judge the circumstances of the case require it, upon good cause being shown, the court or Judge may at any time before such settlement of account and delivery of the estate is completed, revoke the appointment of such assignee, and appoint another in his stead. The liability of the outgoing assignee, or of the sureties on his bond is not in any manner discharged, released or affected by such appointment of another in his stead.

Resignation of assignee.

SEC. 5888. The assignee has power:

Powers of assignee.

1. To sue in his own name, and recover all the estate, debts, and things in action, belonging or due to such debtor, and no set-off or counter claim must be allowed in any such suit for any debt, unless it was owing to such creditor by such debtor at the time of the adjudication of his insolvency;
2. To take into his possession all the estate of such debtor, except property exempt by law from execution, whether delivered to him or afterwards discovered, and all books, vouchers, evidences of indebtedness, and securities belonging to the same;
3. From time to time to sell at public auction all the estate, real and personal, vested in him as such assignee, as ordered by the court;
4. On such sales to execute the necessary conveyances and bills of sale;
5. To redeem all valid mortgages and conditional contracts, and all valid pledges of personal property, and to satisfy any judgments which may be an incumbrance on any property sold by him, or to sell such property subject to such mortgage, contracts, pledges, or judgments;
6. To settle all matters and accounts between such debtor and his debtors, subject to the approval of the court;
7. Under the order of the court appointing him, to compound with any person indebted to such debtor, and thereupon to discharge all demands against such person;
8. To have and recover from any person receiving a conveyance, gift, transfer, payment or assignment, made fraudulently or contrary to any provision of this Title, the property thereby transferred or assigned, or in case a redelivery of the property cannot be had, to recover the value thereof, with damages for the detention.

SEC. 5889. The insolvent must, either before or on the day appointed for the meeting of creditors, deliver to the court all the commercial or account books he may have kept, which books must be deposited in the Clerk's office of said court.

Delivery of books and papers.

Said insolvent must also deliver to the court, at the same time, all vouchers, notes, bonds, bills, securities, or other evidences of debt, in any manner relating to or having any bearing upon or connection with the property surrendered by said debtor, and all such papers or securities must be deposited in the Clerk's office of said court, and the clerk must deliver them, together with the books of the insolvent, to the assignee who may be appointed.

Embezzlement.

SEC. 5890. If any person, before the assignment is made, having notice of the commencement of proceedings in insolvency, embezzles or disposes of any of the moneys, goods, chattels, or effects of the insolvent, he is chargeable therewith, and liable to an action by the assignee for double the value of the property so embezzled or disposed of, to be recovered for the benefit of the estate.

Penalties, etc., persons suspected of concealing, etc., property of debtor.

SEC. 5891. The same penalties, forfeitures, and proceedings by citation, examination, and commitment apply on behalf of an assignee against persons suspected of having concealed, embezzled, conveyed away, or disposed of any property of the debtor, or of having possession or knowledge of any deeds, conveyances, bonds, contracts, or other writings which relate to any interest of the debtor in any real or personal estate, as provided in the case of the estates of deceased persons.

Estate to be converted into money. Private sales.

SEC. 5892. The assignee must, as speedily as possible, convert the estate, real and personal, into money. He must keep a regular account of all moneys received by him as assignee, to which every creditor, or other person interested therein may, at all reasonable times, have access. No private sale of any property of the estate of an insolvent debtor is valid unless made under the order of the court upon a petition in writing, which must set forth the facts showing the sale to be necessary. If it appears that a private sale is for the best interests of the estate, the court or Judge may order it to be made.

Sale of perishable property.

SEC. 5893. When it appears to the satisfaction of the court or Judge that the estate of the debtor, or any part thereof, is of a perishable nature, or is liable to deteriorate in value, or is disproportionately expensive to keep, the court or Judge may order the same to be sold in such manner as may be deemed most expedient, under the direction of the sheriff or assignee, as the case may be, who must hold the funds received in place of the property sold until the further order of the court.

Outstanding debts.

SEC. 5894. Outstanding debts, or other property due or belonging to the estate, which cannot be collected and received by the assignee without unreasonable or inconvenient delay or expense, may be sold and assigned in like manner as the remainder of the estate.

Expenses for management of property. Commissions.

SEC. 5895. Assignees must be allowed all necessary expenses in the care, management, and settlement of the estate, and are collectively entitled to charge and receive for their services, commissions upon all sums of money coming to their hands and accounted for by them, as follows: For the first thousand dollars, at the rate of ten per cent; for all above that sum and not exceeding ten thousand dollars, at the rate of five per cent; and for all above that sum, at the rate of four per cent.

Accounts of assignee.

SEC. 5896. At the expiration of three months from the appointment of the assignee in any case, or as much earlier as the Judge may direct, the assignee must exhibit to the Judge and to the creditors, and file, just and true accounts of all his receipts and payments, verified by his oath, and a statement of the property outstanding, specifying the cause of its outstanding; also what debts or claims are yet undetermined, and stating what sum remains in his possession, and thereupon a dividend must be made, unless for cause the court or Judge otherwise order. Thereafter, further accounts, statements, and dividends must be made in like manner as often as occasion requires.

SEC. 5897. The court or Judge must at any time, upon the motion of any two or more creditors, require the assignee to file his account, and if he has funds subject to distribution, he must be required to distribute them without delay.

Orders for accounts and distribution.

SEC. 5898. All creditors whose debts are duly proved and allowed are entitled to share in the property and estate pro rata, without priority or preference whatever, other than as provided in this Title; *Provided*, That any debt proved by any person liable as bail, surety, guarantor, or otherwise, for the debtor, must not be paid to the person so proving the same until satisfactory evidence is produced of the payment of such debt by such person so liable; and the share to which such debt would be entitled may be paid into court, or otherwise held for the benefit of the party entitled thereto, as the court may direct.

Creditors to share pro rata.

SEC. 5899. No dividend already declared, must be distributed by reason of debts being subsequently proved, but the creditors proving such debts, are entitled to a dividend equal to those already received by the other creditors, before any further dividend is made to the latter; provided, the failure to prove such claim has not resulted from the creditor's own neglect.

Dividends not to be disturbed for subsequently proved debts.

SEC. 5900. Should the assignee refuse or neglect to render his accounts, or to pay over a dividend when he has, in the opinion of the court or Judge, sufficient funds for that purpose, the court or Judge must immediately discharge such assignee from his trust, and appoint another in his place. The assignee so discharged must forthwith deliver over to the assignee appointed, all the funds, property, books, vouchers, or securities belonging to the insolvent, without charging or retaining any commission or compensation for his personal services.

Discharge of assignee.

SEC. 5901. Preparatory to the final account and dividend, the assignee must submit his account to the court, and file the same, and must at the time of filing, accompany the same with an affidavit, that notice by mail has been given to all creditors who have proved their claims; that he will apply for a settlement of his account, and for a discharge from all liability as assignee at a time specified in such notice, which time must be not less than ten or more than twenty days from such filing. At the hearing, the court must audit the account, and any person interested may appear and file exceptions in writing, and contest the same. The court thereupon must settle the account and order a dividend of any portion of the estate remaining undistributed, and discharge the assignee, subject to compliance with the order of the court, from all liability as assignee to any creditor of the insolvent.

Final account of assignee.

Insolvency of partnerships.

SEC. 5902. Two or more persons who are partners in business may be adjudged insolvent, either on the petition of such partners, or any one of them, in which case an order must be issued in the manner provided by this Title, upon which all the joint stock and property of the partnership, and also all the separate estate of each of the partners must be taken, excepting such parts thereof as may be exempt by law, and all the creditors of the company, and the separate creditors of each partner, may prove their respective debts; and the assignee must be chosen by the creditors of the co-partnership, and must keep separate accounts of the joint stock or property of the co-partnership, and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignee the whole amount of the expenses and disbursements, the net proceeds of the joint stock must be appropriated to pay the creditors of the co-partnership, and the net proceeds of the separate estate of each partner must be appropriated to pay his separate creditors; and if there is any balance of the separate estate of any partner after the payment of his separate debts, such balance must be added to the joint stock for the payment of the joint creditors, and if there is any balance of the joint stock after the payment of the joint debts, such balance must be divided and appropriated to and among the separate estate of the several partners according to their respective rights and interest therein, and as it would have been if the partnership had been dissolved without insolvency; and the sum so appropriated to the separate estate of each partner must be applied to the payment of his separate debts, and the certificate of discharge must be granted or refused to each partner as the same would or ought to be if the proceedings had been by him alone under this Title; and in all other respects the proceedings as to partners must be conducted in the like manner as if they had been commenced and prosecuted by or against one person alone.

If such co-partners reside in different counties, that court in which the petition is first filed may retain exclusive jurisdiction over the case. If the petition be filed by less than all the partners of a co-partnership, those partners who do not join in the petition must be ordered to show cause why they should not be adjudged to be insolvent.

Applicable to corporations.

SEC. 5903. The provisions of this Title apply to corporations, and upon petition of any officer of any corporation duly authorized by the vote of the board of directors or trustees, at a meeting specially called for that purpose, or by the assent in writing of a majority of the directors or trustees, as the case may be, the like proceedings shall be had and taken as are provided in the case of individual debtors. All the provisions of this Title which apply to the debtor, or set forth his duties, examination and liabilities, or prescribe penalties, or relate to fraudulent conveyances, payments and assignments, apply to each and every officer of any corporation in relation to the same matters concerning the corporation. Whenever any corporation is declared insolvent, all its property and assets must be distributed to the creditors; but no discharge can be granted to any corporation.

All debts may be proved against debtor.

SEC. 5904. All debts due and payable from the debtor at the time of the adjudication of insolvency, and all debts then existing but not payable until a future time, a rebate of interest being made, when no interest is payable by the terms of the contract, may be proved against the estate of the debtor.

Proof of demands for tortious acts.

SEC. 5905. All demands against the debtor for or on account of any goods or chattels wrongfully taken, converted, or withheld by him may be proved and allowed as debts, to the amount of the value of the property so withheld, from the time of the conversion.

Proof of demands against debtor, or indorser, surety, etc.

SEC. 5906. If the debtor is bound as indorser, surety, bail or guarantor, upon any bill, bond, note, or other specialty or contract, or for any debt of another person, and his liability has not become absolute until the adjudication of insolvency, the creditor may prove the same after such liability becomes fixed, and before the final dividend is declared.

Contingent liabilities.

SEC. 5907. In all cases of contingent debts, and contingent liabilities contracted by the debtor and not herein otherwise provided for, the creditor may make claim therefor and have his claim allowed, with the right to share in the dividends if the contingency happens before the order for the final dividend, or he may, at any time, apply to the court or Judge to have the present value of the debtor liability ascertained and liquidated, which must be done in such manner as the court or Judge may order, and must be allowed to prove for the amount so ascertained.

Person liable for debtor may prove debt, etc.

SEC. 5908. Any person liable as bail, surety, or guarantor, or otherwise, for the debtor who has paid the debt, or any part thereof, in discharge of the whole, is entitled to prove such debt, or to stand in the place of the creditor, if he has proved the same, although such payments are made after the proceedings in insolvency were commenced; and any person so liable for the debtor, and who has not paid the whole of said debt, but is still liable for the same, or any part thereof, may, if the creditor fails or omits to prove such debt, prove the same in the name of the creditor.

Rent and installment debts.

SEC. 5909. Where the debtor is liable to pay rent, or other debt falling due at fixed and stated periods, the creditor may prove, for a portionate part thereof up to the time of the insolvency, as if the same became due from day to day, and not at such fixed and stated periods.

Mutual credits, set-offs and counter claims.

SEC. 5910. In all cases of mutual debts and mutual credits between the parties, the account between them must be stated, and one debt set off against the other, and the balance only allowed and paid. But no set-off or counterclaim must be allowed of a claim in its nature not provable against the estate; or in favor of any debtor to the insolvent of a claim purchased by or transferred to him after the filing of the petition, for the purpose of making such set-off or counterclaim.

Mortgages and pledges against debtor.

SEC. 5911. When a creditor has a mortgage or pledge of real or personal property of the debtor, or a lien thereon, for securing the payment of a debt owing to him from the debtor, he must be admitted as a creditor only for the balance of the debt, after deducting the value of such property, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the court or Judge may direct; or the creditor may release or convey his claim to the assignee, upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon, and in either case the assignee and creditor respectively must execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, the creditor must not be allowed to prove any part of his debt.

Creditor proving claims to waive suits and rights of action.

SEC. 5912. No creditor proving his debt or claim must be allowed to maintain any suit at law or in equity therefor against the debtor, but is deemed to have waived all right of action and suit against him, and all proceedings already commenced, are deemed to be discharged and surrendered thereby; *Provided,* That no valid lien existing in good faith thereunder is thereby affected; and, *Further provided,* That a creditor proving his debt or claim is not held to have waived his right of action or suit against the debtor where a discharge is refused, or the proceedings are determined without a discharge.

Examination of debtor.

SEC. 5913. The court or Judge may, upon the application of the assignee, or of any creditor of the debtor or without any application before or after adjudication in insolvency, examine upon oath the debtor in relation to his property and his estate, and any person tendering or making proof of claims, may subpœna witnesses to give evidence relating to such matters. All examinations of witnesses must be had and depositions must be taken in accordance with and in the same manner as is provided by the Code of Civil Procedure.

Petition for discharge.

Notice to creditors.

SEC. 5914. At any time after the expiration of three months from the adjudication of insolvency, the debtor may apply to the court for a discharge from his debts, and the court must thereupon order notice to be given to all creditors who have proved their debts, to appear on a day appointed for that purpose and show cause why a discharge should not be granted to the debtor; said notice must be given by mail, and by publication at least once a week, for four weeks, in a newspaper published in the county, or if there be none, in a newspaper published nearest such county; *Provided,* That if no debts have been proven, such notice is not required.

Discharge, when not granted.

SEC. 5915. No discharge must be granted, or if granted is valid, if the debtor has sworn falsely in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in insolvency, in relation to any material fact concerning his estate, or his debts, or to any other material fact; or if he has concealed any part of his estate or effects, or any books or writings relating thereto; or if he has been guilty of fraud or willful neglect in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this Title, or if he has caused or permitted any loss or destruction thereof; or if, within one month before the commencement of such proceedings, he has procured his lands, goods, money, or chattels to be attached, or seized, on execution; or if he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document with intent to defraud his creditors; or if he has made any fraudulent gift, transfer, conveyance, or assignment of any part of his property, or has admitted a false or fictitious debt against his estate, or if, having knowledge that any person has proven such false or fictitious debt, he has not disclosed the same to his assignee within one month after such knowledge; or if, being a merchant or tradesman, he has not, subsequently to the passage of this Title, kept proper books of account; or if he or any other person on his account, or in his behalf, has influenced the action of any creditor at any stage of the proceedings, by any pecuniary consideration or obligation; or if he has, in contemplation of becoming insolvent, made any pledge, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this title in satisfaction of his debts; or if he has been convicted of any misdemeanor under this Title, or has been guilty of fraud contrary to the true intent of this Title, or has received the benefits of this or any other act of insolvency or bankruptcy within three years next preceding his application for discharge, and before any discharge is granted, the debtor must take and subscribe an oath to the effect, that he has not done, suffered, or been privy to any act, matter or thing specified in this Title, as ground for withdrawing such discharge or as invalidating such discharge if granted.

Opposition to discharge.

SEC. 5916. Any creditor opposing the discharge of a debtor, must file specifications, in writing, of the grounds of his opposition, and after the debtor has filed and served his answer thereto, which pleadings must be verified, the court must try the issue or issues raised, with or without a jury, according to the practice provided by law in civil cases.

Certificate of discharge.

SEC. 5917. If it appears to the court that the debtor has in all things conformed to his duty under this Title, and that he is entitled, under the provisions thereof, to receive a discharge, the court must grant him a discharge from all his debts, except as hereinafter provided, and must give him a certificate thereof, under the seal of the court, in substance, as follows:

In the District Court of the——Judicial District of Idaho Territory, in and for——County. Whereas, ——— has been duly adjudged an insolvent under the insolvent laws of this Territory, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said——be forever discharged from all debts and claims, which by said insolvent laws, are made provable against his estate, and which existed on the——day of——, on which the petition for adjudication was filed by him, excepting such debts, if any, as are, by said insolvent laws, excepted from the operation of a discharge in insolvency.

Given under my hand, and the seal of the court, this — day of———, A. D. 18—. Attest, ———, Clerk.

(Seal.) ———, Judge.

Fraudulent debts not discharged.

SEC. 5918. No debt created by fraud or embezzlement of the debtor, or by his defalcations as a public officer, or while acting in a judiciary character, and no indebtedness or liability for funds, deposits, or goods received as a banker, broker, commission merchant or factor, can be discharged under this Title, but the debt may be proved and the dividend thereon is a payment on account of said debt; and no discharge granted under this Title releases, discharges or affects any person liable for the same debt for or with the debtor, either as partner, joint contractor, indorser, surety or otherwise.

Effect and operation of discharge.

SEC. 5919. A discharge duly granted under this Title, with the exceptions aforesaid, releases the debtor from all claims, debts, liabilities and demands set forth in his schedule, or which were or might have been proved against his estate in insolvency, and may be pleaded by a simple averment that on the day of its date such discharge was granted to him, setting forth the same in full, and the same is a complete bar to all suits brought on any such debts, claims, liabilities or demands, and the certificate is prima facie evidence in favor of such fact, and of the regularity of such discharge; *Provided, however*, That any creditor of said debtor whose debt was proved, or provable, against the estate in insolvency, who sees fit to contest the validity of such discharge on the ground that it was frudulently obtained, and who has discovered the facts constituting the fraud subsequent to the discharge, may, at any time within two years after the date thereof, apply to the court which granted it, to set aside and annul the same; or if the same is pleaded, the effect thereof may be avoided collaterally upon any such grounds.

Refusal of discharge, effect of.

SEC. 5920. The refusal of a discharge to the debtor does not affect the administration and distribution of his estate under the provisions of this Title.

Death of insolvent, pending proceedings.

SEC. 5921. If any debtor dies after the order of adjudication, the proceedings may be continued and concluded in like manner and with like validity and effect as if he had lived.

Statute of limitations, when not to run.

SEC. 5922. Pending proceedings by any person, co-partnership or corporation, no statute of limitations runs against a claim which in its nature is provable against the estate of the debtor.

Representation by attorney.

SEC. 5923. Any creditor at any stage in the proceedings, may be represented by his attorney or duly authorized agent.

Homesteads and exemptions.

SEC. 5924. It is the duty of the court or Judge having jurisdiction of the proceedings, to exempt and set apart for the use and benefit of said insolvent, such real and personal property as is by law exempt from execution.

Commencement of proceedings.

SEC. 5925. The filing of the petition upon which an order of adjudication in insolvency may be made, shall be deemed to be the commencement of proceedings in insolvency under this Title.

Certain words defined.

SEC. 5926. Words used in this Title in the singular, include the plural, and in the plural, the singular, and the word "debtor" includes partnerships and corporations.

Receivers.

SEC. 5927. A receiver may be appointed by the court or Judge in which an insolvent proceeding is pending before the election of an assignee:

1. Upon the application of creditors, where it is shown that the property, or any portion thereof, is in danger of being lost, removed or materially injured;

2. In all other cases where receivers are appointed by the usage of Courts of Equity. And thereupon the appointment, oath, undertaking and powers of such receiver are in all respects regulated by the general laws applicable to receivers.

Contempts.

SEC. 5928. All sections of the Code of Civil Procedure relating to contempts are hereby made applicable to all proceedings under this Title. An appeal is allowed to the Supreme Court from any order adjudging any person guilty of contempt of court.

Attachment liens, costs in contested matters.

SEC. 5929. When an attachment has been made and is not dissolved before the commencement of proceedings in insolvency, or is dissolved by an undertaking given by the defendant, if the claim upon which the attachment suit was commenced is proved against the estate of the debtor, the plaintiff may prove the legal costs and disbursements of the suit, and of the keeping of the property, and the amount thereof is a preferred debt. In all contested matters in insolvency the court may, in its discretion, award costs to either party, to be paid by the other, or to either or both parties, to be paid out of the estate, as justice and equity may require. In awarding costs the court may issue execution therefor.

Dismissals and discontinuances.

SEC. 5930. The court or Judge may, upon the application of the debtor, dismiss the petition and discontinue the proceedings at any time before the appointment of assignee. After the appointment of assignee no dismissal must be made without the consent of all parties interested in or affected thereby.

Appeals.

SEC. 5931. An appeal may be taken to the Supreme Court in the following cases:

1. Allowing or rejecting a creditor's claim, in whole or in part;
2. Overruling a motion for a new trial;
3. Settling an account of an assignee;
4. Against or in favor of setting apart homestead or other property claimed as exempt from execution;
5. Granting or refusing a discharge to the debtor. The notice, undertaking, and procedure on appeal must conform to the general laws of this Territory, regulating appeals in civil cases, except that when the assignee has given an official undertaking and appeals from a judgment or order in insolvency his official undertaking stands in the place of an undertaking on appeal, and the sureties therein are liable on such undertaking.

Other assignments void.

SEC. 5932. No assignment of any insolvent debtor, otherwise than as provided in this Title, is legal or binding on creditors.

PART IV.—OF EVIDENCE.

TITLE I.

OF THE KINDS AND DEGREES OF EVIDENCE.

CHAPTER I.

JUDICIAL KNOWLEDGE.

SECTION
5950. Certain facts of general notoriety assumed to be true. Specification of such facts.
5951. Questions of law addressed to the court.

Certain facts assumed to be true.

Specification of.

SECTION 5950. Courts take judicial notice of the following facts:

1. The true signification of all English words and phrases, and of legal expressions;
2. Whatever is established by law;
3. Public and private official acts of the legislative, executive and judicial departments of this Territory and of the United States;
4. The seals of all the courts of this Territory and of the United States;
5. The accession to office and the official signatures and seals of office of the principal officers of government in the legislative, executive and judicial departments of this Territory, and of the United States;
6. The existence, title, national flag, and seal of every state or sovereign recognized by the executive power of the United States;
7. The seals of courts of admiralty and maritime jurisdiction, and of notaries public;
8. The laws of nature, the measure of time, and the geographical divisions and political history of the world. In all these cases the court may resort for its aid to appropriate books or documents of reference.

Questions of law addressed to the court.

New section.

SEC. 5951. All questions of law arising upon the trial, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court when submitted and before the trial proceeds, and all discussions of law are to be addressed to the court. Whenever the knowledge of the court is by this chapter made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.

CHAPTER II.

WITNESSES.

SECTION
5956. All persons capable of perception and communication may be witnesses.
5957. Persons who cannot testify.
5958. Persons in certain relations to parties prohibited.
5959. Judge or juror may be witness.
5960. When an interpreter to be sworn.

Persons capable of perception, may be witnesses.

SECTION 5956. All persons, without exception, otherwise than is specified in the next two sections, who, having organs of sense, can perceive, and, perceiving, can make known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons who have an interest in the event of an action or proceeding are excluded; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case the credibility of the witness may be drawn in question, by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

Persons who cannot testify.

SEC. 5957. The following persons cannot be witnesses:

1. Those who are of unsound mind at the time of their production for examination;

2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly;

3. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or an administrator, upon a claim or demand against the estate of a deceased person, as to any matter of fact occurring before the death of such deceased person.

Persons in certain relations to parties prohibited.

SEC. 5958. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards, be without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by violence of one against the person of the other;

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment;

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs;

4. A physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient;

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Judge or juror may be witness.

SEC. 5959. The Judge himself, or any juror, may be called as a witness by either party; but in such case it is in the discretion of the court to order the trial to be postponed or suspended, and to take place before another Judge or jury.

When an interpreter to be sworn.

SEC. 5960. When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person, a resident of the proper county, may be summoned by any court or Judge to appear before such court or Judge to act as interpreter in any action or proceeding. The summons must be served and returned in like manner as a subpœna. Any person so summoned who fails to attend at the time and place named in the summons, is guilty of a contempt.

CHAPTER III.

PUBLIC WRITINGS.

SECTION
5965. Every citizen entitled to inspect and copy public writings.
5966. Public officers bound to give copies.
5967. Public and private statutes.
5968. Four kinds of public writings.
5969. Books containing laws presumed to be correct.
5970. Public seal authenticates a law or document.
5971. Other evidence of laws of other States and Territories.
5972. Recitals in statutes, how far evidence.
5973. Judicial record defined.
5974. Record how authenticated as evidence.

SECTION
5975. Record of a foreign country, how authenticated.
5976. Oral evidence of a foreign record.
5977. Manner of proving other official documents.
5978. Public record of private writing evidence.
5979. Entries in official books primary evidence.
5980. Justice's judgment in other States, how proved.
5981. Same.
5982. Contents of other official certificates.
5983. Certificates of purchase primary evidence of ownership.
5984. Entries made by officers or Boards primary evidence.

Citizens entitled to inspect public writing.

SECTION 5965. Every citizen has a right to inspect and take a copy of any public writing of this Territory, except as otherwise expressly provided by statute.

Public officers must give copies.
Amended.

SEC. 5966. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

Statutes defined.

SEC. 5967. Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

Kinds of public writings.

SEC. 5968. Public writings are divided into four classes:

1. Laws;
2. Judicial records;
3. Other official documents;
4. Public records kept in this Territory, of private writings.

Books containing laws presumed to be correct.

SEC. 5969. Books printed or published under the authority of a State, Territory, or foreign country, and purporting to contain the statutes, code, or other written law of such State, Territory, or country, or proved to be commonly admitted in the tribunals of such State, Territory, or country as evidence of the written law thereof, are admissible in this Territory as evidence of such law.

Certified copy of law, or public writing.

SEC. 5970. A copy of the written law, or other public writing of any State, Territory, or country, attested by the certificate of the officer having charge of the original, under the public seal of the State, Territory, or country, is admissible as evidence of such law or writing.

SEC. 5971. The oral testimony of witnesses skilled therein, is admissible as evidence of the unwritten law of a State, other Territory, or foreign country, as are also printed and published books of reports of decisions of the courts of such State, Territory, or country, commonly admitted in such courts.

Other evidence of laws of other States and Territories.

SEC. 5972. The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

Recitals in statutes, how far evidence.

SEC. 5973. A judicial record is the record or official entry of the proceedings in a Court of Justice, or of the official act of a judicial officer, in an action or special proceeding.

Judicial record defined.

SEC. 5974. A judicial record of this Territory, or of the United States, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof. That of a State or other Territory may be proved by the attestation of the clerk and the seal of the court annexed, if there be a clerk and seal, together with a certificate of the Chief Judge or presiding magistrate, that the attestation is in due form.

Record, how authenticated as evidence.

SEC. 5975. A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there be a clerk or seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the Chief Judge, or presiding magistrate, that the person making the attestation is the clerk of the court or the legal keeper of the record, and, in either case, that the signature of such person is genuine, and that the attestation is in due form. The signature of the Chief Judge, or presiding magistrate, must be authenticated by the certificate of the Minister or Embassador, or a Consul, Vice-Consul, or Consular Agent of the United States in such foreign country.

Record of foreign country, how authenticated.

SEC. 5976. A copy of the judicial record of a foreign country is also admissible in evidence, upon proof:

Oral evidence of a foreign record.

1. That the copy offered has been compared by the witness with the original and is an exact transcript of the whole of it;
2. That such original was in the custody of the Clerk of the Court, or other legal keeper of the same; and,
3. That the copy is duly attested by a seal which is proved to be the seal of the court where the record remains, if it be the record of a court, or if there be no such seal, or if it be not a record of a court, by the signature of the legal keeper of the original.

SEC. 5977. Other official documents may be proved as follows:

Manner of proving other official documents.

1. Acts of the Executive of this Territory, by the records; and of the United States, by the records of the Departments of the United States, certified by the heads of those departments respectively. They may also be proved by public documents, printed by the order of the Legislature or Congress, or either house thereof;
2. The proceedings of the Legislature of this Territory, or of Congress, by the journals of those bodies respectively,

or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk, or printed by their order;

3. The acts of the Executive, or the proceedings of the Legislature of a State or other Territory in the same manner;

4. The acts of the Executive, or the proceedings of the Legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof, is some public act of the Executive of the United States;

5. Acts of a municipal corporation of this Territory or of a Board or department thereof, by a copy, certified by the legal keeper thereof, or by a printed book, published by the authority of such corporation;

6. Documents of any other class in this Territory, by the original, or by a copy, certified by the legal keeper thereof;

7. Documents of any other class in a State, or other Territory, by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the Secretary of State, Judge of the Supreme, District, Superior, or County Court, or Mayor of a city of such State or Territory, that the copy is duly certified by the officer having the legal custody of the original;

8. Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate under seal, of the country or sovereign, that the document is a valid and subsisting document of such country, and that the copy is duly certified by the officer having the legal custody of the original;

9. Documents in the departments of the United States Government, by the certificate of the legal custodian thereof.

Public record of private writing evidence.

SEC. 5978. A public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.

Entries in official books prima facie evidence.

SEC. 5979. Entries in public or other official books or records, made in the performance of his duty by a public officer of this Territory, or by another person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts stated therein.

Justice's judgment, how proved.

SEC. 5980. A transcript from the record or docket of a Justice of the Peace of a State or other Territory, of a judgment rendered by him, of the proceedings in the action before the judgment, of the execution and return, if any, subscribed by the Justice and verified in the manner prescribed in the next section, is admissible evidence of the facts stated therein.

Same

SEC. 5981. There must be attached to the transcript a certificate of the Justice that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the clerk or prothonotary of the county in which the Justice resided at the time of rendering the judgment, under the seal of the county, or the seal of the Court of Common Pleas, or County Court, or court of general jurisdiction thereof, certifying that the person subscribing the transcript was, at the date of the judgment, a Justice of the Peace in the county, and that the signature is genuine. Such judgment, proceedings, and jurisdiction may also be proved by the Justice himself, on the production of his docket, or by a copy of the judgment, and his oral examination as a witness.

Official certificates, contents of.

SEC. 5982. Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state in substance, that the copy is a correct copy of the original, or of a specified part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be a Clerk of a Court having a seal, under the seal of such court.

Certificates of purchase evidence of ownership.

SEC. 5983. A certificate of purchase, or of location, of any lands in this Territory, issued or made in pursuance of any law of the United States, is primary evidence that the holder or assignee of such certificate is the owner of the land described therein; but this evidence may be overcome by proof that, at the time of the location, or time of filing a pre-emption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party, or those under whom he claims, or that the adverse party is holding the land for mining purposes.

Entries made by officers, etc., prima facie evidence.

SEC. 5984. An entry made by an officer, or board of officers, or under the direction and in the presence of either, in the course of official duty, is *prima facie* evidence of the facts stated in such entry.

CHAPTER IV.

PRIVATE WRITINGS.

SECTION
5989. Manner of making seal.
5990. Books, maps, etc., how far evidence.
5991. When in possession of adverse party, notice to be given.
5992. Writings called for and inspected may be withheld.
5993. Writing, how may be proved.
5994. Other witnesses may also testify.

SECTION
5995. When evidence of execution not necessary.
5996. Entries of decedents evidence in specified cases.
5997. Private writings acknowledged and certified.
5998. Instrument acknowledged.
5999. Contents of writing, how proved.

Public and private seals, how made.

SECTION 5989. A public seal in this Territory is a stamp or impression made by a public officer with an instrument provided by law to attest the execution of an official or public document, upon the paper or upon any substance attached to the paper, which is capable of receiving a visible impression. A private seal may be made in the same manner by any instrument, or it may be made by the scroll of a pen, or by writing the word "seal" against the signature of the writer. A scroll or other sign made in a State or other Territory or foreign country, and there recognized as a seal, must be so regarded in this Territory.

Scroll or sign.

Books, maps, etc., how far evidence.

SEC. 5990. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are *prima facie* evidence of facts of general notoriety and interest.

When in possession of adverse party, notice to be given.

SEC. 5991. If the writing be in the custody of the adverse party, he must first have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

Writings called for and inspected may be withheld.

SEC. 5992. Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

Writing, how may be proved.

SEC. 5993. Any writing may be proved either:

1. By any one who saw the writing executed; or,
2. By evidence of the genuineness of the handwriting of the maker; or,
3. By a subscribing witness.

Other witnesses may also testify.

SEC. 5994. If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

When evidence on execution not necessary.

SEC. 5995. Where, however, evidence is given that the party against whom the writing is offered, has at any time admitted its execution, no other evidence of the execution need be given, when the instrument is one produced from the custody of the adverse party, and has been acted upon by him as genuine.

Entries of decedents, evidence in specified cases.

SEC. 5996. The entries and other writings of a decedent, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as *prima facie* evidence of the facts stated therein, in the following cases:

1. When the entry was made against the interest of the person making it;
2. When it was made in a professional capacity, and in the ordinary course of professional conduct;
3. When it was made in the performance of a duty specially enjoined by law.

Private writings acknowledged and certified.

SEC. 5997. Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided for the acknowledgment or proof of conveyances of real property, and the certificate of such acknowledgment or proof is *prima facie* evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

Copies of record admissible without further proof.

SEC. 5998. Every instrument conveying or affecting real property, acknowledged or proved, and certified, as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence, in an action or proceeding, without further proof, and a certified copy of the record, of such conveyance or instrument thus acknowledged or proved, may also be read in evidence, with the like effect as the original, on proof, by affidavit, or otherwise, that the original is not in the possession or under the control of the party producing the certified copy.

Contents of writings, how proved.

SEC. 5999. There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

1. When the original has been lost or destroyed; in which case proof of the loss or destruction must first be made;
2. When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice;
3. When the original is a record or other document in the custody of a public officer;

4. When the original has been recorded, and a certified copy of the record is made evidence by this Code or other statutes;

5. When the original consists of numerous accounts or other documents, which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole. In the cases mentioned in subdivision three and four, a copy of the original, or of the record, must be produced; in those mentioned in subdivisions one and two, either a copy or oral evidence of the contents.

CHAPTER V.

INDISPENSABLE EVIDENCE.

SECTION
6005. To prove perjury and treason.
6006. Will to be in writing.
6007. Transfer of real property to be in writing.
6008. Last section not to extend to certain cases.
6009. Agreement not in writing, when invalid.
6010. When valid.
6011. Representation of credit by writing.

SECTION 6005. Perjury and treason must be proved by testimony of more than one witness. Treason by the testimony of two witnesses to the same overt act; and perjury by the testimony of two witnesses, or one witness and corroborating circumstances.

Perjury and treason to prove.

SEC. 6006. A last will and testament, except a nuncupative will, is invalid, unless it be in writing and executed with such formalities as are required by law. When, therefore, such a will is to be shown, the instrument itself must be produced, or secondary evidence of its contents be given.

Will to be in writing.

SEC. 6007. No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

Transfer of real property to be in writing.

SEC. 6008. The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

Last section not to extend to certain cases.

SEC. 6009. In the following cases the argument is invalid, unless the same or some note or memorandum thereof be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

Agreement not in writing, when invalid.

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in the next section;

3. An agreement made upon consideration of marriage, other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

Engagement to answer for obligation of another, when deemed original.

SEC. 6010. A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part, in consideration of such promise;

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligations in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety;

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person;

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale;

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration and in connection with such transfer, enters into a promise respecting such instrument.

Representation of credit by writing.

SEC. 6011. No evidence is admissible to charge a person upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by or in the handwriting of the party to be charged.

TITLE II.

OF THE PRODUCTION OF EVIDENCE.

CHAPTER I.

BY WHOM TO BE PRODUCED.

SECTION
6030. Writing altered, who to explain.

Writing altered, who to explain.

SECTION 6030. The party producing a writing as genuine which has been altered, or appears to have been altered after its execution in a part material to the question in dispute, must account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he do that he may give the writing in evidence, but not otherwise.

CHAPTER II.

MEANS OF PRODUCTION.

SECTION
6035. Subpœna for witness defined.
6036. Subpœna, how issued.
6037. Subpœna, how served.
6038. How, if witness be concealed.
6039. When a witness is compelled to attend.
6040. Person present compelled to testify.
6041. Disobedience, how punished.

SECTION
6042. Forfeiture thereof.
6043. Warrant may issue to bring witness, when.
6044. Contents of warrant.
6045. If witness be a prisoner, how brought.
6046. On whose motion.
6047. How examined.

Subpœna for witness defined.

SECTION 6035. The process by which the attendance of a witness is required is a subpœna. It is a writ or order directed to a person and requiring his attendance at a particular time and place to testify as a witness. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Subpœna, how issued.

SEC. 6036. The subpœna is issued as follows:

1. To require attendance before a court, or at the trial of an issue therein, it is issued in the name of the court before which the attendance is required, or in which the issue is pending;

2. To require attendance out of the court, before a Judge, Justice, or other officer authorized to administer oaths or take testimony in any matter under the laws of this Territory, it is issued by the Judge, Justice, or any other officer before whom the attendance is required;

3. To require attendance before a Commissioner appointed to take testimony by a court of a foreign country, or of the United States, or of any State or other Territory in the United States, or of any other district or county within this Territory, or before any officer or officers empowered by the laws of the United States to take testimony, it may be issued by any Judge or Justice of the Peace in places within their respective jurisdiction, with like power

to enforce attendance; and, upon certificate of contumacy to said court, to punish contempt of their process, as such Judge or Justice could exercise if the subpœna directed the attendance of the witness before their courts in a matter pending therein.

Subpœna, how served.

SEC. 6037. The service of a subpœna is made by showing the original and delivering a copy, or a ticket, containing its substance, to the witness personally, or by leaving a copy with some suitable person at the place of his abode, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by any person.

How, if witness be concealed.

SEC. 6038. If a witness is concealed in a building or vessel, so as to prevent the service of a subpœna upon him, any court or Judge, or any officer issuing the subpœna, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the Sheriff of the county serve the subpœna, and the Sheriff must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

When a witness is not compelled to attend.

SEC. 6039. A witness is not obliged to attend as a witness before any court, Judge, Justice, or any other officer, out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of trial.

Persons present compelled to testify.

SEC. 6040. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

Disobedience, how punished.

SEC. 6041. Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer issuing the subpœna or requiring the witness to be sworn; and if the witness be a party, his complaint or answer may be stricken out.

Forfeiture therefor.

SEC. 6042. A witness disobeying a subpœna also forfeits to the party aggrieved the sum of one hundred dollars, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

Warrants may issue to bring witness, when.

SEC. 6043. In case of failure of a witness to attend, the court or officer issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the Sheriff of the County to arrest the witness and bring him before the court or officer where his attendance was required.

Contents of warrant.

SEC. 6044. Every warrant of commitment, issued by a court or officer pursuant to this Chapter, must specify therein particularly, the cause of the commitment, and if it be for refusing to answer a question, such question must be stated in the warrant. And every warrant to arrest or commit a witness pursuant to this Chapter, must be directed to the Sheriff of the county where the witness may be, and must be executed by him in the same manner as process issued by the District Court.

If witness be prisoner, how brought.

SEC. 6045. If the witness be a prisoner, confined in a jail or prison within this Territory, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made as follows:

1. By the court itself in which the action or special proceeding is pending, unless it be a Justice's Court;
2. By a Justice of the Supreme Court, Judge of the District Court or Probate Judge of the county where the action or proceeding is pending, if pending before a Justice's Court, or before a Judge or other person out of court.

On whose motion.

SEC. 6046. Such order can only be made on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

How examined.

SEC. 6047. If the witness be imprisoned in the county where the action or proceeding is pending, his production may be required. In all other cases his examination, when allowed, must be taken upon deposition.

CHAPTER III.

MODE OF TAKING THE TESTIMONY OF WITNESSES.

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Affidavits and depositions, how taken.

SECTION 6052. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly permitted by some other provision of this Code.

Evidence of publication, what.

SEC. 6053. Evidence of the publication of a document or notice required by law, or by an order of the court or Judge, to be published in a newspaper, may be given by the affidavit of the printer of the newspaper, or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when, and the paper in which the publication was made.

Where filed.

SEC. 6054. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or a clerk thereof. If not so made, it may be filed with the Recorder of the county where the newspaper is printed. In either case the original affidavit, or a copy thereof, certified by the Judge of the court or officer having it in custody, is *prima facie* evidence of the facts stated therein.

Affidavits before whom taken.

SEC. 6055. An affidavit to be used before any court, Judge or officer of this Territory, may be taken before any Judge or Clerk of any Court, or any Justice of the Peace, or Notary Public in this Territory.

If out of the *Territory*, before whom taken.

SEC. 6056. An affidavit taken in a State or other Territory of the United States, to be used in this Territory, may be taken before a Commissioner appointed by the Governor of this Territory to take affidavits and depositions in such State or Territory, or before any Notary Public in such State or Territory, or before any Judge or Clerk of a Court of Record having a seal.

If made in a foreign country, before whom taken.

SEC. 6057. An affidavit taken in a foreign country to be used in this Territory, may be taken before an embassador, minister, consul, vice-consul or consular agent of the United States, or before any Judge of a Court of Record having a seal, in such foreign country.

Certificate of clerk.

SEC. 6058. When an affidavit is taken before a Judge or a court in a State or other Territory, or in a foreign country, the genuineness of the signature of the Judge, the existence of the court, and the fact that such Judge is a member thereof, must be certified by the Clerk of the Court, under the seal thereof.

Testimony of witness out of Territory, when taken.

SEC. 6059. The testimony of a witness out of the Territory may be taken by deposition, in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding, at any time after a question of fact has arisen therein.

Testimony taken in this Territory. 14 ses.

SEC. 6060. The testimony of any person in this Territory, competent to testify as a witness, may be taken in a civil action, at any time after the service of summons or the appearance of the defendant; and in a special proceeding, after a question of fact has arisen therein; but such deposition shall be used only when it shall appear at the time the same is offered for use:

1. That the witness reside out of the county in which the action or proceeding is pending, or is absent therefrom; or,
2. That the witness is unable to attend court on account of age, infirmity, imprisonment, or death.

[Act Feb. 10, 1887.]

Deposition to be used on motion. New section.

SEC. 6061. Where a party intends to make or oppose a motion in a court of record, in an action pending or about to be commenced, and it is necessary for him to have the affidavit or deposition of a person not a party to use upon the motion, the court or a Judge authorized to make an order, in the cause, may, in its or his discretion, make an order, appointing a referee to take the depositions of that person. The order must be founded upon proof, by affidavit, that the applicant intends to make the motion, or that notice of a motion has been given, which the applicant intends to oppose. The affidavit must specify the nature of the motion, and must show that the affidavit or deposition is necessary thereon,. and that such person has refused to make an affidavit of the facts which the applicant verily believes are within his knowledge. The order may be made upon or without notice. The person to be examined may be subpœnaed, and compelled to attend, as upon the trial. The deposition when taken, must be delivered to the attorney for the party who procured the order, unless the order provides for a different disposition thereof.

Testimony of witness out of Territory, etc.

SEC. 6062. The deposition of a witness out of this Territory may be taken upon commission issued from the court under the seal of the court, upon an order of the Judge or court, or Probate Judge, on the application of either party, upon five days' previous notice to the other. If issued to any place within the United States, it may be directed to a person agreed upon by the parties, or if they do not agree, to any Judge or Justice of the Peace, or person named as commissioner by the court or Judge issuing it. If issued to any country out of the United States, it may be directed to a Minister, Embassador, Consul, Vice-Consul, or Consular Agent of the United States in such country, or to any person agreed upon by the parties.

Proper interogatories may be prepared.

SEC. 6063. Such proper interrogatories, direct and cross, as the respective parties may prepare to be settled, if the parties disagree as to their form, by the Judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the commission; or, when the parties agree to that mode, the examination may be without written interrogatories.

Duties, etc., of commissioner.

SEC. 6064. The commission must authorize the commissioner to administer an oath to the witness, and to take his deposition in answer to the interrogatories, or, when the examination is to be without interrogatories, in respect to the question in dispute, and to certify the deposition to the court, in a sealed envelope, directed to the clerk or other person designated or agreed upon, and forwarded to him by mail or other usual channel of conveyance.

Trial, when postponed.

SEC. 6065. A trial or other proceeding must not be postponed by reason of a commission not returned, except upon evidence, satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

Deposition, by whom served.

SEC. 6066. The deposition mentioned in this chapter may be used by either party on the trial or other proceeding, against any other party giving or receiving the notice, subject to all just exceptions.

Depositions may be taken before a judge, etc.

SEC. 6067. Either party may have the deposition taken of a witness in this Territory, in either of the cases mentioned in section 6060 before a Judge or officer authorized to administer oaths, on serving upon the adverse party previous notice of the time and place of examination, together with a copy of an affidavit, showing that the case is within that section. Such notice must be at least five days, adding also one day for every twenty-five miles of the distance of the place of examination from the residence of the person to whom the notice is given, unless for a cause shown, a Judge, by order, prescribes a shorter time. When a shorter time is prescribed, a copy of the order must be served with the notice.

Manner of taking depositions.

SEC. 6068. Either party may attend the examination and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to the witness and corrected by him in any particular, if desired; it must then be subscribed by the witness, certified by the Judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed, and directed to the Clerk of the Court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the Judge or officer to the Clerk or such person, or transmitted through the mail or by some safe private opportunity; and thereupon such deposition may be used by either party upon the trial or other proceeding against any party giving or receiving the notice, subject to all legal exceptions; but if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was stated at the time of the examination. If the deposition be taken under subdivisions 2, 3 and 4, of Section 6060, proof must be made at the trial that the witness continues absent or infirm, or is dead. The deposition thus taken may be also read in case of the death of the witness.

May be used by either party on trial.

When deposition excluded.

SEC. 6069. Notwithstanding the taking of a deposition, it may be excluded from the case upon proof, that sufficient notice was not given to the party against whom it is offered to enable him to attend the taking thereof, or that the taking was not in all respects fair.

Deposition once taken may be read at any time.

SEC. 6070. When a deposition has been once taken, it may be read by either party in any stage of the same action or proceeding, or in any other action between the same parties, upon the same subject, and is then deemed the evidence of the party reading it.

Deposition in this Territory to be used in other States.

SEC. 6071. Any party to an action or special proceeding in a court, or before a Judge of a State or other Territory, may obtain the testimony of a witness residing in this Territory to be used in such action or proceeding, in the cases mentioned in the next two sections.

How to procure witness upon commission.

SEC. 6072. If a commission to take such testimony has been issued from the court or Judge before whom such action or proceeding is pending, on producing the commission to a District or Probate Judge, with an affidavit satisfactory to him of the materiality of the testimony, he may issue a subpœna to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place.

How, if no commission.

SEC. 6073. If a commission has not been issued, and it appears to a District or Probate Judge, or Justice of the Peace, by affidavit satisfactory to him:

1. That the testimony of the witness is material to either party;
2. That a commission to take the testimony of such witness has not been issued;
3. That according to the law of the State or Territory where the action or special proceeding is pending, the deposition of a witness taken under such circumstances, and before such Judge or Justice, will be received in the action or proceeding;—He must issue his subpœna, requiring the wit-

ness to appear and testify before him at a specified time and place.

SEC. 6074. Upon the appearance of the witness, the Judge or Justice must cause his testimony to be taken in writing, and must certify and transmit the same to the court or Judge before whom the action or proceeding is pending, in such manner as the law of that State or Territory requires.

Depositions, how taken.

SEC. 6075. If either party requires it, the Judge may exclude from the court room any witness of the adverse party, not at the time under examination, so that he may not hear the testimony of other witnesses.

Witnesses may be excluded, when.

SEC. 6076. The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness, by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise direct.

Direct and cross-examination defined. N. S.

SEC. 6077. A question which suggests to the witness the answer which the examining parties desires is denominated a leading or suggestive question. On a direct examination, leading questions are not allowed, except in the sound discretion of the court, under special circumstances, making it appear that the interests of justice require it.

Leading questions defined. New section.

SEC. 6078. A witness is allowed to refresh his memory respecting a fact, by anything written by himself, or under his direction, at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. But in such case the writing must be produced, and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it, and may read it to the jury. So also a witness may testify from such a writing, though he retain no recollection of the particular facts, but such evidence must be received with caution.

When witness may refresh memory from notes.

SEC. 6079. The opposite party may cross-examine the witness as to any facts material to the issues in the action, and in so doing may put leading questions.

Cross-examination, as to what. N. S.

SEC. 6080. The party producing a witness, is not allowed to impeach his credit by evidence of bad character, but he may contradict him by other evidence, and may also show that he has made at other times, statements inconsistent with his present testimony.

Party producing not allowed to impeach witness. N. S.

SEC. 6081. A witness once examined cannot be re-examined as to the same matter without leave of the court, but he may be re-examined as to any new matter upon which he has been examined by the adverse party. And after the examinations on both sides are once concluded, the witness cannot be recalled without leave of the court. Leave is granted or withheld, in the exercise of a sound discretion.

Witness, how examined. N. S.

SEC. 6082. A witness may be impeached by the party against whom he was called, by contradictory evidence, or by evidence that his general reputation for truth, honesty, or integrity is bad, but not by evidence of particular wrongful acts, except that it may be shown by the examin-

How impeached. N. S.

ation of the witness, or the record of the judgment, that he had been convicted of a felony.

Same. N. S.

SEC. 6083. A witness may also be impeached by evidence, that he has made, at other times, statements inconsistent with his present testimony; but before this can be done, the statements must be related to him, with the circumstances of times, places, and persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing, they must be shown to the witness before any question is put to him concerning them.

Character, etc. N. S.

SEC. 6084. Evidence of the good character of a party is not admissible in a civil action, nor of a witness in any action, until the character of such party or witness has been impeached, or unless the issue involves his character.

Writing shown witness, may be inspected by opposite party. N. S.

SEC. 6085. Whenever a writing is shown to a witness, it may be inspected by the opposite party, and if proved by the witness, must be read to the jury before his testimony is closed, or it cannot be read except on recalling the witness.

TITLE III.

OF THE RIGHTS AND DUTIES OF WITNESSES.

SECTION
6090. Witnesses bound to attend when subpœnaed.
6091. Witnesses bound to answer questions.
6092. Witnesses protected from arrest.
SECTION
6093. Arrest to be made void.
6094. To make affidavit if arrested.
6095. Court to discharge witnesses from arrest.

Witness to attend when subpœnaed.

SECTION 6090. A witness, served with a subpœna, must attend at the time appointed, with any papers under his control, required by the subpœna, and answer all pertinent and legal questions, and, unless sooner discharged, must remain until the testimony is closed.

Witness bound to answer questions.

SEC. 6091. A witness must answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself; but he need not give an answer which will have a tendency to subject him to punishment for a felony; nor need he give an answer which will have a direct tendency to degrade his character, unless it be the very fact in issue, or to a fact from which the fact in issue would be presumed. But a witness must answer as to the fact of his previous conviction for felony.

Witness protected from arrest, when.

SEC. 6092. Every person who has been, in good faith, served with a subpœna to attend as a witness before a court, Judge, Commissioner, referee, or other person, in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action, while going to the place of attendance, necessarily remaining there and returning therefrom.

Arrest to be made void, when.

SEC. 6093. The arrest of a witness, contrary to the preceding section, is void, and, when willfully made, is a contempt of the court; and the person making it is responsible to the witness arrested for double the amount of the damages which may be assessed against him, and is also liable to an action at the suit of the party serving the witness with the subpœna, for the damages sustained by him in consequence of the arrest.

To make affidavit, if arrested.

SEC. 6094. An officer is not liable to the party for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the party, if such party claim the exemption, and make an affidavit stating:

1. That he has been served with a subpœna to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and,

2. That he has not thus been served by his own procurement, with the intention of avoiding an arrest;

3. That he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpœna. The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.

Court to discharge witness from arrest.

SEC. 6095. The court or officer issuing the subpœna, and the court or officer before whom the attendance is required, may discharge the witness from an arrest made in violation of the provisions of this Title. If the court have adjourned before the arrest, or before application for the discharge, a Judge of the Court or a Probate Judge may grant the discharge.

TITLE IV.

MISCELLANEOUS AND GENERAL PROVISIONS.

CHAPTER I.

TENDER AND RECEIPT.

SECTION
6110. An offer equivalent to tender.
6111. Whoever pays, entitled to receipt.

SECTION 6110. An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property, is, if not accepted, equivalent to the actual production and tender of the money, instrument, or property.

Offer equivalent to tender.

SEC. 6111. Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

Whoever pays entitled to a receipt.

CHAPTER II.

PROCEEDINGS TO PERPETUATE TESTIMONY.

SECTION
6116. Evidence may be perpetuated.
6117. Manner of application for order.
6118. Notice of time and place to be given.
6119. Manner of taking the deposition.
6120. Papers to be filed.
6121. When the evidence may be used.
6122. Effect of the deposition.

SECTION 6116. The testimony of a witness may be taken and perpetuated as provided in this chapter.

Evidence may be perpetuated.

SEC. 6117. The applicant must produce to a District Judge, or to a Probate Judge, a petition verified by the oath of the applicant, stating:

Manner of application.

1. That the applicant expects to be a party to an action in a court in this Territory, and, in such case, the names of the persons whom he expects will be adverse parties; or,

2. That the proof of some fact is necessary to perfect the title to property in which he is interested, or to establish marriage, descent, heirship, or any other matter which it may hereafter become material to establish, though no suit may at the time be anticipated, or, if anticipated, he may not know the parties to such suit; and,

3. The name of the witness to be examined, his place of residence, and a general outline of the facts expected to be proved. The Judge to whom such petition is presented must make an order allowing the examination and designating the officer before whom the same must be taken, and prescribing the notice to be given, which notice, if the parties expectant are known and reside in this Territory, must be personally served, and if unknown, such notice must be served on the Recorder of the county where the property to be affected by the evidence is situated, or the Judge making the order resides, as may be directed by him and by publication thereof in some newspaper, to be designated by the Judge, for the same period required for the publication of summons. The Judge must also designate

in his order, the Recorder of the County to whom the depositions must be returned when taken.

Appointee of judge, authority of.

SEC. 6118. The person appointed by the Judge to take the depositions is authorized, if a resident of this Territory, on receiving a copy of the order of the Judge, and of the notice prescribed in the last section, with proof of its personal service or publication; or, if a resident without the Territory, on receiving the commission mentioned in the next section, with proof of like service of publication of the notice; to take the deposition of the witness named in the order of the Judge, or in the commission, or, if more than one witness is thus named, of such of them as appear before him, at the time designated, and the taking of the same may be continued from time to time.

Manner of taking the deposition.

SEC. 6119. The examination must be by question and answer, and if the testimony is to be taken in a State or other Territory, it must be taken upon a commission, to be issued by the Judge, allowing the examination, under the seal of the court of which he is Judge, and upon interrogatories, to be settled in the same manner as in cases of depositions taken under commission in pending actions, unless the parties expectant, if known, otherwise agree. If such parties are unknown, notice of the settlement of the interrogatories shall be published in some newspaper for such time as the Judge may designate. The deposition, when completed, must be carefully read to and subscribed by the witness, then certified by the officer or person taking the same, and shall then be sealed up and delivered or transmitted to the Recorder of the County designated in the order of the Judge allowing the examination, who shall file the same when received. The Judge allowing the examination shall file with the Recorder the order for the examination, the petition on which the same was granted, with proof of service of the order and notice.

Papers filed prima facie evidence.

SEC. 6120. The petition and order, and papers filed by the Judge, as provided in the last section, or a certified copy thereof, are *prima facie* evidence of the facts stated therein to show compliance with the provisions of this chapter.

When evidence may be produced.

SEC. 6121. If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such depositions prove, or tend to prove, upon proof of the death, or insanity of the witness, or that they cannot be found, or are unable, by reason of age, or other infirmity, to give their testimony, the depositions or copies thereof may be used by either party, subject to all legal objections; but if the parties attend at the examination, no objection to the form of an interrogatory can be made at the trial, unless the same was stated at the examination.

Effect of the deposition.

SEC. 6122. The deposition so taken and read in evidence has the same effect as the oral testimony of the witness, and no other, and every objection to the witness, or to the revelancy of any question put to him, or of any answer given by him, may be made in the same manner as if he were examined orally at the trial.

CHAPTER III.

ADMINISTRATION OF OATHS AND AFFIRMATIONS.

SECTION
6127. Judicial and certain officers authorized to administer oaths.
6128. Form of ordinary oath to a witness.
6129. Form may be varied to suit witness' belief.
SECTION
6130. Same.
6131. Any person who prefers it may declare or affirm.

SECTION 6127. Every court, every Judge, or Clerk of any Court, every Justice and every Notary Public, the Secretary of the Territory, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has power to administer oaths or affirmations.

Certain officers authorized to administer oaths.

SEC. 6128. An oath or affirmation in an action or proceeding, may be administered as follows, the person who swears or affirms, expressing his assent when addressed, in the following form:

Form of ordinary oath to a witness.

"You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in the issue (or matter), pending between ———— and ————, shall be the truth, the whole truth, and nothing but the truth, so help you God."

SEC. 6129. Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court may, in its discretion, adopt that mode.

Form may be varied to suit belief.

SEC. 6130. When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Same.

SEC. 6131. Any person who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting when addressed, in the following form: "You do solemnly affirm (or declare), that", etc., as above provided.

Any person who prefers may affirm.

CHAPTER IV.

FEES OF JURORS AND WITNESSES.

SECTION
6136. Fees of jurors in District Courts.
6137. Clerk to pay juror, how.
6138. Fees of jurors in Probate and Justices' Courts.
SECTION
6139. Fees of witnesses in District Court.
6140. Fees of witnesses in Probate and Justices' Courts.
6141 Fees of interpreters.

SECTION 6136. The pay of grand and petit jurors in the District Court, is three dollars per day for each day of actual attendance at court, and fifteen cents per mile for each mile necessarily traveled in going to and returning from court, which must be paid out of the county treasury.

Fees of jurors in district courts. 8 ses., 709.

SEC. 6137. At the end of each term of a District Court the clerk must make out a certificate to each juror entitled thereto, certifying the number of days such juror has attended court, and the amount remaining due to him for *per diem* and mileage. Each juror must state on oath to the

Clerk to pay juror, how. 8 ses., 709.

clerk the number of miles traveled for which he is entitled to pay; but no juror must receive mileage for going to, or returning from court more than once during the same term; and no person summoned as a juror and excused at his own request, must receive any *per diem* or mileage.

Fees of jurors in probate and justices' courts. 8 ses., 234. 10 ses., 32.

SEC. 6138. Jurors in civil cases in the Probate and Justices' Courts are entitled to receive two dollars per day for each day actually engaged in the trial of a case, which must be entered and taxed up as costs against the losing party.

Fees of witnesses in district court. 8 ses., 796.

SEC. 6139. Witnesses in civil actions in the District Court, or before any referee or commissioner thereof, are entitled to receive three dollars per day for each day's actual attendance, and twenty-five cents per mile one way; to be taxed as costs against the losing party.

Fees of, in probate and justices' courts. 8 ses., 234. 10 ses., 32.

SEC. 6140. Witnesses in civil actions in the Probate and Justices' Courts are entitled to receive two dollars per day for each day's actual attendance, and twenty-five cents per mile one way; to be taxed against the losing party.

Fees of interpreters.

SEC. 6141. Interpreters are entitled to receive three dollars per day for each day's actual attendance upon a court of Justice under a subpœna, and twenty-five cents per mile one way for each mile actually traveled, to be taxed as costs in civil actions, and in criminal actions to be paid out of the County Treasury on the certificate of the Clerk, Judge, or Magistrate, but the amount may be included in the costs taxed against a defendant upon conviction.

CHAPTER V.

DISTRICT COURTS.

SECTION
6146. Establishment of.
6147. Expenses.
6148. Terms in organized counties.

SECTION
6149. One term.
6150. How paid.

District courts established. 13 ses., 95

SECTION 6146. District Courts are hereby established, to be held in each of the counties of this Territory which have been or may hereafter be organized by law, for the purpose of hearing and determining all matters and causes arising under the laws of the Territory.

Expenses. 13 ses., 96.

SEC. 6147. There must be paid to each of the Justices of the Supreme Court, out of the Territorial Treasury, for each term of a District Court held by him for the trial and disposition of causes, and the transaction of business under the laws of the Territory in other counties than that in which he resides, his actual expenses, not exceeding one hundred dollars for traveling and holding each term.

Two terms in organized counties. 13 ses., 96.

SEC. 6148. In order to avail themselves of this chapter, each of said Justices must hold at least two terms of the District Court each year, in each of the organized counties in his district, unless the Board of County Commissioners of any county or counties certify that in their opinion not more than one term is necessary, in which case only one term need be held in such county or counties. There must be at least one term held each year in each of the organized counties.

One term. 13 ses., 96.

SEC. 6149. The Board of Commissioners of each organized county in this Territory, if in their opinion but one term of the District Court will be necessary in their county during the year, must make a certificate to that effect, and forthwith transmit the same, by mail or express, to the Clerk of the Court.

SEC. 6150. Each of said justices may, semi-annually, on the first day of January and July of each year, make and certify an account against the Territory, showing the number of such terms of District Court that have been held by him during the six months next preceding the date of such account, such account to contain a statement of the amount of his expenses, and transmit the same to the Territorial Controller, and upon receipt of such account, said Controller must issue to the justice so certifying a Territorial warrant not exceeding one hundred dollars for each term so certified to have been held by him. Such warrants must be drawn upon the general fund of the Territory, and must be paid in the same manner as other warrants on that fund are paid. How paid. 13 ses., 96.

PENAL CODE

OF

IDAHO TERRITORY.

PART FOURTH.—PENAL.

PRELIMINARY PROVISIONS.

SECTION
6300. Title of Part IV of the Revised Statutes and how cited.
6301. Certain terms defined in the senses in which they are used in this Code.
6302. What intent to defraud is sufficient.
6303. Civil remedies preserved.
6304. Proceedings to impeach or remove officers and others preserved.
6305. Courts of justice to punish for contempts.
6306. Of sections declaring crimes punishable. Duty of court
6307. Punishments, how determined.
6308. Witness' testimony may be read against him on prosecution for perjury.
SECTION
6309. "Crime" and "public offense" defined.
6310. Crimes, how divided.
6311. Felony and misdemeanor defined.
6312. Punishment of felony, when not otherwise prescribed.
6313. Punishment of misdemeanor, when not otherwise prescribed.
6314. To constitute crime there must be unity of act and intent.
6315. Intent, how manifested, and who considered of sound mind.
6316. Drunkenness no excuse for crime. When it may be considered.

Title of Part IV, how cited.

SECTION 6300. Part Fourth of these Revised Statutes, shall be known as the Penal Code of the Territory of Idaho, and whenever cited, enumerated, referred to, or amended, may be designated simply as the Penal Code, adding, when necessary, the number of the section.

Certain terms defined.

SEC. 6301. The following words, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

Willfully.

First. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage;

Negligence.

Second. The words "neglect," "negligence," "negligent," and "negligently," import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns;

Corruptly.

Third. The word "corruptly," imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person;

Malice.

Fourth. The words "malice," and "maliciously," import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law;

Knowingly.

Fifth. The word "knowingly," imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission;

Bribe.

Sixth. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity;

Person.

Seventh. Where the word "person" is used in this Code to designate the party whose property may be the subject of any offense, it includes this Territory, any other Territory, any State, government, or country, which may lawfully own any property within this Territory, and all public and private corporations or joint associations, as well as individuals.

What intent to defraud is sufficient. Cr. S., 156.

SEC. 6302. Whenever, by any of the provisions of this Code, an intent to defraud is required in order to constitute any offense, it is sufficient if any intent appears to defraud any person, association, or body politic or corporate, whatever.

Civil remedies preserved. N. S.

SEC. 6303. The omission to specify or affirm in this Code any liability to damages, penalty, forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

Proceedings to remove officers and others preserved. N. S.

SEC. 6304. The omission to specify or affirm in this Code any ground of forfeiture of a public officer, or other trust or special authority conferred by law, or any power conferred by law to remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such removal, deposition, or suspension.

Courts of justice to punish for contempts. N. S.

SEC. 6305. This Code does not affect any power conferred by law upon any public body, tribunal or officer, to impose or inflict punishment for a contempt.

Duty of court.

SEC. 6306. The several sections of this Code which declare certain crimes to be punishable as therein mentioned, devolves a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

Punishments, how determined. N. S.

SEC. 6307. Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case, must be determined by the court authorized to pass sentence within such limits as may be prescribed by this Code.

Witness' testimony, etc. N. S.

SEC. 6308. The various sections of this Code which declare that the evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

"Crime" defined. Cr. Prac., Sec. 1.

SEC. 6309. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death;
2. Imprisonment;
3. Fine;
4. Removal from office; or,
5. Disqualification to hold and enjoy any office of honor, trust or profit in this Territory.

SEC. 6310. Crimes are divided into:
1. Felonies; and,
2. Misdemeanors.

Crimes, how divided. Cr. Prac., Sec. 2.

SEC. 6311. A felony is a crime which is punishable with death or by imprisonment in the Territorial prison. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the Territorial prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the Territorial prison.

Felony and misdemeanor defined. Cr. Prac., Sec. 3, 4.

SEC. 6312. Except in cases where a different punishment is prescribed by this Code, every offense declared to be a felony, is punishable by imprisonment in the Territorial prison not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Punishment of felony. Cr., 151.

SEC. 6313. Except in cases where a different punishment is prescribed by this Code, every offense declared to be a misdemeanor, is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding three hundred dollars, or by both.

Punishment of misdemeanor. Cr., 151.

SEC. 6314. In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.

To constitute crime, what. Cr., 1.

SEC. 6315. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity.

Intent, how manifested etc. Cr , Sec. 2, 3.

SEC. 6316. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

Drunkenness no excuse for crime. Cr., 7.

When it may be considered.

PART I.—OF CRIMES AND PUNISHMENTS.

TITLE I.

OF PERSONS LIABLE TO PUNISHMENT FOR CRIME.

SECTION
6330. Who are capable of committing crimes.
SECTION
6331. Who are liable to punishment.

Who are capable of committing crimes. Cr., 4.

SECTION 6330. All persons are capable of committing crimes, except those belonging to the following classes:

1. Children under the age of fourteen years, in the absense of clear proof that at the time of committing the act charged against them, they knew its wrongfulness;

2. Idiots;

Cr , 3

3. Lunatics and insane persons;

4. Persons who committed the act or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent;

5. Persons who committed the act charged without being conscious thereof;

Cr , 8

6. Persons who committed the act or made the omission charged, through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence;

Cr , 6.

7. Married women (unless the crime be punishable with death) acting under the threats, command, or coercion of their husbands;

Cr., 9.

8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged, under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.

Who are liable to punishment.

SEC. 6331. The following persons are liable to punishment under the laws of this Territory:

1. All persons who commit, in whole or in part, any crime within this Territory.

2. All who commit larceny or robbery out of this Territory, and bring to, or are found with the property stolen, in this Territory;

3. All who, being out of this Territory, cause or aid, advise or encourage, another person to commit a crime within this Territory, and are afterwards found therein.

TITLE II.

OF PARTIES TO CRIME.

SECTION
6341. Classification of parties to crime.
6342. Who are principals.
SECTION
6343. Who are accessories.
6344. Punishment of accessories.

SECTION 6341. The parties to crimes are classified as:
1. Principals; and,
2. Accessories.

Classification of parties to crime. N. S.

SEC. 6342. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics, or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

Who are principals. Cr., 10. Cr., 7.

SEC. 6343. All persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor and protect the person charged with or convicted thereof, are accessories.

Who are accessories. Cr., 11.

SEC. 6344. Except in cases where a different punishment is prescribed, an accessory is punishable by imprisonment in the Territorial prison not exceeding two years, or by fine not exceeding five thousand dollars.

Accessories, punishment of. Cr., 11.

TITLE III.

OF CRIMES AGAINST THE ELECTIVE FRANCHISE.

SECTION
6354. Violation of election laws by certain officers a felony.
6355. Refusal to be sworn by or to answer questions of Board of Judges of Election a misdemeanor.
6356. Voting without being qualified, voting twice, and other election frauds, felonies.
6357. Attempting to vote without being qualified.
6358. Procuring illegal voting a misdemeanor.
6359. Changing ballots or altering returns by election officers, felonies.

SECTION
6360. Election officers unfolding or marking tickets guilty of a misdemeanor.
6361. Forging or altering returns a felony.
6362. Adding to or subtracting from votes given a felony.
6363. Persons aiding and abetting or concealing guilty of felony.
6364. Intimidating, corrupting, deceiving or defrauding electors, a misdemeanor.
6365. Riotous conduct at elections.
6366. Betting on elections.
6367. Violation of election laws by persons not officers.

Violation of election laws, by certain officers.

Elec. law. Sec. 34, 27. Act Feb. 3, 1885.

SECTION 6354. Every person charged with the performance of any duty, under the provisions of any law of this Territory relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the Territorial prison not exceeding five years, or by both.

Refusal to be sworn, a misdemeanor. N. S

SEC. 6355. Every person who, after being required by the Board of Judges at any election, refuses to be sworn, or who, after being sworn, refuses to answer any pertinent question propounded by such Board, touching his right, or the right of any other person to vote, is guilty of a misdemeanor.

Voting without being qualified, etc., felonies.

SEC. 6356. Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets folded together, or changes any ballot after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

Act Feb. 7 1881.

Attempting to vote without being qualified. Act Feb. 7. 1881.

SEC. 6357. Every person not entitled to vote, who fraudulently attempts to vote, or who, after being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

Procuring illegal voting, a misdemeanor. Act Feb. 7, 1881.

SEC. 6358. Every person who procures, aids, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, is guilty of a misdemeanor.

Changing ballots, altering returns, etc., felonies, Act Feb. 7, 1881.

SEC. 6359. Every officer or clerk of election who aids in changing or destroying any poll list, or in placing any ballots in the ballot box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy any poll list, ballot box, or ballots lawfully polled, is guilty of a felony.

Officers unfolding tickets, etc., misdemeanor. Act Feb. 7, 1881.

SEC. 6360. Every officer, Judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens, or suffers the folded ballot of any elector which has been handed in, to be opened or examined previous to putting the same into the ballot box, or who makes, or places any mark or device on any folded ballot, with a view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such officer, Judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine, not less than fifty nor more than five hundred dollars.

Forging returns, a felony. Act 1881.

SEC. 6361. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact, held, or willfully substitutes forged or counterfeit returns of election in the place of the true returns, for a precinct, town, or ward where an election was actually held, is guilty of a felony.

Adding to or subtracting from, a felony. Act 1881.

SEC. 6362. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is guilty of a felony.

Aiding and abetting, punishment of. N. S.

SEC. 6363. Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, is punishable by imprisonment in the county jail for the period of six months, or in the Territorial prison not exceeding two years.

Intimidating, corrupting, etc., a misdemeanor. Act 1881.

SEC. 6364. Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever, to awe, restrain, hinder, or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person, for any office, than he intended or desired to vote for; or who, being officer, Judge, or clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

Riotous conduct at elections. Act of 1881.

SEC. 6365. Any person who willfully disturbs, or is guilty of any riotous conduct, at or near any election place, or voting precinct, with intent to disturb the same, or interferes with the access of the electors to the polling place, or in any manner, with the free exercise of the election franchise of the voters, or any voter there assembled, or disturbs or interferes with the canvassing of the votes, or with the making of the returns, is guilty of a misdemeanor.

Betting on elections. N. S.

SEC. 6366. Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

Violation of election laws by persons not officers.

SEC. 6367. Every person who willfully violates any of the provisions of the laws of this Territory relating to elections is, unless a different punishment for such violation is prescribed by law, punishable by fine not exceeding one thousand dollars, or by imprisonment in the Territorial prison not exceeding five years, or by both.

TITLE IV.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER.

SECTION
6380. Giving or offering bribes to executive officers.
6381. Asking or receiving bribes.
6382. Resisting officers.
6383. Extortion.
6384. Violation of laws prohibiting certain officers from dealing in scrip, etc., and from being interested in contracts.
6385. Fraudulently presenting bills or claims to public officers for allowance or payment.

SECTION
6386. Buying appointments to office.
6387. Taking rewards for deputation.
6388. Exercising functions of office wrongfully.
6389. Refusal to surrender books, etc., to successor.
6390. Preceding sections to apply to administrative and ministerial officers.
6391. Disqualified person holding office.
6392. Officer performing duties of two offices.

Giving or offering bribes to executive officers. Cr., 93.

SECTION 6380. Every person who gives or offers any bribe to any executive officer of this Territory, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is guilty of a felony.

Asking or receiving bribes. Cr., 94.

SEC. 6381. Every executive officer or person elected or appointed to an executive office, who asks, receives, or agrees to receive any bribe upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is guilty of a felony, and forfeits his office.

Resisting officers. Cr., 100. Act Jan. 12, 1877.

SEC. 6382. Every person who attempts by means of any threat or violence, to deter or prevent any executive officer from performing any duty imposed upon such officer by law, or who knowingly resists by the use of force or violence, such officer, in the performance of his duty, is punishable by fine not exceeding five thousand dollars or imprisonment in the Territorial prison not exceeding five years, or both.

Extortion. N. S.

SEC. 6383. Every executive officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Prohibiting officers from dealing in scrip, etc. Act Jan. 5, 1875.

SEC. 6384. Every officer or person prohibited by the laws of this Territory from becoming a purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars, or by imprisonment in the Territorial prison not more than five years.

Fraudulent bills, etc. N. S.

SEC. 6385. Every person who, with intent to defraud, presents for allowance or for payment to any Territorial board or officer, or to any county, town, city, ward, or village board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony.

Buying appointments. N. S.

SEC. 6386. Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor.

Taking rewards for deputation. Cr., 115.

SEC. 6387. Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding five thousand dollars, and in addition thereto forfeits his office.

Exercising functions of office wrongfully. N. S.

SEC. 6388. Every person who willfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, willfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor.

Refusal to surrender books, etc., to successor. Cr., 97, 113.

SEC. 6389. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from office, willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilates, destroys, or takes away the same, is guilty of a felony.

Preceding sections applicable. N. S.

SEC. 6390. The various provisions of this Title apply to administrative and ministerial officers, in the same manner as if they were mentioned therein.

Disqualified person holding office. 13 ses., 117.

SEC. 6391. Every person not a legal voter and possessing all the qualifications prescribed for voters, or who is under any disqualification created by the laws of this Territory, who holds or exercises any office, is guilty of a misdemeanor.

Officer performing duties of two offices or neglecting duties under revenue law. Comp. laws, 516.

SEC. 6392. Any officer who, at the same time, performs the duties of any two officers, in any manner connected with the public revenue, except in the manner expressly provided by law, or any collecting or disbursing officer who refuses or neglects the performance of the duties required of him by the title "Revenue" of the Political Code is guilty of a felony, and on conviction thereof must be punished by imprisonment in the Territorial prison not more than one year, or by a fine of not less than two hundred nor more than one thousand dollars, or by both such fine and imprisonment, and must forthwith be removed from office.

TITLE V.

OF CRIMES AGAINST THE LEGISLATIVE POWER.

SECTION
6410. Altering draft of bill or resolution.
6411. Altering enrolled copy of bill or resolution.
6412. Giving or offering bribes to members of the Legislature.
6413. Receiving bribes by members of the Legislature.
SECTION
6414. Witnesses refusing to attend, testify, or produce papers before the Legislature or committees thereof.
6415. Members of the Legislature, in addition to other penalties, to forfeit office and be disqualified, etc.

SECTION 6410. Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the Houses composing the Legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either House, or certified by the presiding officer of either House, in language different from that intended by such House, is guilty of felony.

Altering draft of bill or resoution.
N. S.

SEC. 6411. Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the Legislature with intent to procure it to be adopted by the Governor, or certified by the Secretary of the Territory, or printed or published by the printer of the statutes, in language different from that in which it was passed or adopted by the Legislature, is guilty of felony.

Altering enrolled copy of bill or resolution.
N. S.

SEC. 6412. Every person who gives or offers to give a bribe to any member of the Legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the House or any committee of which he is a member, is guilty of a felony.

Giving or offering bribes to legislative members.
Cr., 92.

SEC. 6413. Every member of either of the Houses composing the Legislature of this Territory who asks, receives, or agrees to receive any bribe, upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given, in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives, or offers, or promises to give, any official vote in consideration that another member of the Legislature shall give any such vote either upon the same or another question, is guilty of a felony.

Receiving bribes by members of the legislature.
Cr., 92.

SEC. 6414. Every person who, being summoned to attend as witness before either House of the Legislature or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons; and every person who, being present before either House of the Legislature or any committee thereof, willfully refuses to be sworn or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers, or documents in his possession or under his control, is guilty of a misdemeanor.

When witnesses refuse to attend, etc.
N. S.

SEC. 6415. Every member of the Legislature convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this Territory.

Legislative members to forfeit office, etc.
Cr., 92, 93.

TITLE VI.

OF CRIMES AGAINST PUBLIC JUSTICE.

CHAPTER I.

BRIBERY AND CORRUPTION.

SECTION
6430. Giving bribes to judges, jurors, referees, etc.
6431. Receiving bribes by judicial officers, jurors, etc.
6432. Extortion.
6433. Improper attempts to influence jurors, referees, etc.
6434. Misconduct of jurors, referees, etc.
6435. Justice or constable purchasing judgment.
6436. Officers to forfeit and be disqualified from holding office.

Bribing judges, jurors, etc. Crs., 92, 93.

SECTION 6430. Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is guilty of a felony.

Judicial officers, etc., receiving bribes. Cr., 92, 93.

SEC. 6431. Every judicial officer, juror, referee, arbitrator, or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matters or question which is or may be brought before him for decision, shall be influenced thereby, is guilty of a felony.

Extortion. Cr., 113.

SEC. 6432. Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Improper attempts to influence juror, etc. Cr., 112.

SEC. 6433. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or umpire, or appointed a referee, in respect to his verdict in, or decision of, any cause pending, or about to be brought before him, either:

1. By means of any communication, oral or written, had with him, except in the regular course of proceedings;
2. By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings;
3. By means of any threat, intimidation, persuasion, or entreaty; or,
4. By means of any promise or assurance of any pecuniary or other advantage; is guilty of a felony.

Misconduct of jurors, etc. Cr., 112.

SEC. 6434. Every juror or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either:

1. Makes any promise or agreement to give a verdict or decision for or against any party; or,
2. Willfully and corruptly permits any communication to be made to him, or receive any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings, is guilty of a felony.

SEC. 6435. Every Justice of the Peace or Constable of the same precinct who purchases or is interested in the purchase of any judgment or part thereof on the docket of, or on any docket in possession of such Justice, is guilty of a misdemeanor.

Justice, etc., purchasing judgment. Cr., 114.

SEC. 6436. Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office.

Officers to forfeit office.

CHAPTER II.

RESCUES.

SECTION
6446 Rescuing prisoners.
SECTION
6447. Retaking goods from custody of officer.

SECTION 6446. Every person who rescues, or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

Rescuing prisoners. Cr., 101, 102.

1. If such prisoner was in custody upon a conviction of felony punishable with death, by imprisonment in the Territorial prison not less than one, nor more than fourteen years;
2. If such prisoner was in custody upon a conviction of any other felony, by imprisonment in the Territorial prison not less than six months nor more than five years;
3. If such prisoner was in custody upon a charge of felony, by a fine not exceeding one thousand dollars and imprisonment in the county jail not exceeding one year;
4. If such prisoner was in custody otherwise than upon a charge or conviction of felony, by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding six months.

SEC. 6447. Every person who willfully injures or destroys, or takes, or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

Retaking goods from custody of officer. N. S.

CHAPTER III.

ESCAPES AND AIDING THEREIN.

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6452. Escapes from Territorial prison.
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6454. Escapes from other than Territorial prison.
SECTION
6455. Officers suffering convicts to escape.
6456. Assisting prisoner to escape.
6457. Carrying into prison things useful to aid in an escape.
6458. Expense of trial for escape.

SECTION 6452. Every Territorial prisoner confined in the Territorial prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the Territorial prison for a term equal in length to the term he was serving at the time of such escape; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

Escapes from Territorial prison. N. S.

Attempt to escape from Territorial prison. N. S.

SEC. 6453. Every prisoner confined in the Territorial prison for a term less than for life, who attempts to escape from such prison, is guilty of a felony, and, on conviction thereof, the term of imprisonment therefor shall commence from the time such convict would otherwise have been discharged from said prison.

Escapes from other prisons. N. S.

SEC. 6454. Every prisoner confined in any other prison than the Territorial prison, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

Officers suffering convicts to escape. Crs., 103, 107.

SEC. 6455. Every keeper of a prison, Sheriff, Deputy Sheriff, Constable or jailor, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the Territorial prison not exceeding ten years, and fine not exceeding ten thousand dollars. Every such officer or person who negligently suffers such escape is guilty of a misdemeanor.

Assisting prisoners to escape. Cr., 106.

SEC. 6456. Every person who willfully assists any prisoner confined in any prison or in the lawful custody of any officer or person to escape, or in an attempt to escape from such prison or custody, is guilty of a felony.

Carrying in to prison things useful to aid in an escape. Cr., 104.

SEC. 6457. Every person who carries or sends into a prison anything useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is guilty of a felony.

Expense of trial for escape. N. S.

SEC. 6458. Whenever a trial shall be had of any person under any of the provisions of the first two sections of this chapter, and whenever a Territorial convict in the Territorial prison shall be tried for any crime committed therein, the Clerk of the District Court shall make out a statement of all the costs incurred by the county for the trial of such case, and for the guarding and keeping such convict, and when certified by the Judge who tried the case, such statement shall be audited by the Controller and paid by the Territorial Treasurer to the Treasurer of the county where the trial was had.

CHAPTER IV.

FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

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6464. Larceny, destruction, etc., of records by officers having them in custody.
6465. Larceny, destruction, etc., of records by other persons.
SECTION
6466. Offering false or forged instruments to be filed of record.
6467. Adding names, etc., to jury lists.
6468. Falsifying jury lists, etc.

Larceny, etc., of records by officers. Cr., 95.

SECTION 6464. Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper or proceeding, or who permits any other person so to do, is punishable by imprisonment in the Territorial prison not less than one nor more than fourteen years.

Larceny, etc., of records by other persons. Cr., 95.

SEC. 6465. Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the Territorial prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or by both.

SEC. 6466. Every person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office within this Territory, which instrument, if genuine, might be filed, or registered, or recorded under any law of this Territory or of the United States, is guilty of felony.

Offering false or forged instruments to be filed. N. S.

SEC. 6467. Every person who adds any names to the list of persons selected to serve as jurors, either by placing the same in the jury box or otherwise, or extracts any name therefrom, or destroys the jury box or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony.

Adding names, etc., to jury lists. N. S.

SEC. 6468. Every officer or person required by law to certify to the list of persons selected as jurors who maliciously, corruptly, or willfully certifies to a false or incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury box the same names that are on the certified lists, and no more and no less than are on such list, is guilty of a felony.

Falsifying jury lists, etc. N. S.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

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SECTION 6478. Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

Perjury defined. Cr., 90.

SEC. 6479. The term "oath," as used in the last section, includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated.

Oath Defined. Cr., 90.

SEC. 6480. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections.

Oath of office. N. S.

SEC. 6481. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

Irregularity in administering. N. S.

SEC. 6482. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

Incompetency of witness no defense. N. S.

Knowledge of witness, etc.
N. S.

SEC. 6483. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

Making deposition, etc.
N. S.

SEC. 6484. The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

Statement, etc.
N. S.

SEC. 6485. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

Perjury, punishment of.
Cr., 90.

SEC. 6486. Perjury is punishable by imprisonment in the Territorial prison not less than one or more than fourteen years.

Subornation of perjury.
Cr., 91.

SEC. 6487. Every person who willfully procures another person to commit perjury is guilty of a subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

Execution of innocent prisoner
Cr., 91.

SEC. 6488. Every person who, by willful perjury or subornation of perjury, procures the conviction and execution of any innocent person, is punishable by death.

Falsely swearing to qualifications as a voter.
13 ses, 117.

SEC. 6489. Every person who, upon his right to vote being challenged at any election held under the laws of this Territory, willfully, corruptly and falsely swears touching his qualifications as a voter, is guilty of perjury.

CHAPTER VI.

FALSIFYING EVIDENCE.

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6500. Offering false evidence.
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SECTION
6503. Preventing or dissuading witness from attending.
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6505. Taking or offering to take bribes.

Offering false evidence.
N. S.

SECTION 6500. Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony.

Preparing false evidence.
N. S.

SEC. 6501. Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

Destroying evidence.
N. S.

SEC. 6502. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

Preventing witness from attending.
N. S.

SEC. 6503. Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is guilty of a misdemeanor.

SEC. 6504. Every person who gives or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false or to withhold true testimony, is guilty of a misdemeanor.

Bribing witnesses.
N. S.

SEC. 6505. Every person who is a witness, or is about to be called as such, who receives or offers to receive any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a misdemeanor.

Taking or offering to take bribes.
N. S.

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

SECTION
6510. Officer refusing to receive or arrest parties charged with crime.
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6512. Delaying to take person arrested before a magistrate.
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6516. Assaults, etc., by officers, under color of authority.
6517. Refusing to aid officers in arrest, etc.
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6532. Grand juror disclosing what transpired before the grand jury.
6533. Maliciously procuring search warrant.
6534. Omission of duty by public officer.
6535. Penalty when not prescribed.

SECTION 6510. Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who willfully refuses to receive or arrest any person charged with criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding one year.

Officer refusing to arrest parties.
Cr., 108.

SEC. 6511. Every person holding the office of public administrator, who willfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year, or both.

Public administrator, neglect of duty, etc.
Act Feb. 9, 1881.

SEC. 6512. Every public officer, or other person, having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

Delaying to take person arrested before a magistrate.
N. S.

SEC. 6513. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

Making arrests, etc., without authority.
N. S.

Prisoners, inhumanity to.
Cr., 96.

SEC. 6514. Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office.

Resisting public officers in the discharge of their duties.
Cr., 100.

SEC. 6515. Every person who willfully resists, delays, or obstructs any public officer, in the discharge, or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding one year.

Assaults, etc., by officers under color of authority.
N. S.

SEC. 6516. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars and imprisonment in the county jail not exceeding one year.

Refusing to aid officers in arrest.
C. Prac., 36.

SEC. 6517. Every male person above eighteen years of age who neglects or refuses to join the posse comitaus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars.

Compounding crimes.
Cr., 109.

SEC. 6518. Every person who having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal, such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in the Territorial prison not exceeding five years, or in a county jail not exceeding one year where the crime was punishable by death or imprisonment in the Territorial prison for life.

2. By imprisonment in the Territorial prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the Territorial prison for any other term than for life.

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

Debtor fraudulently concealing property.
Cr., 135.

SEC. 6519. Every debtor who fraudulently removes his property or effects out of this Territory, or fraudulently sells, conveys, assigns, or conceals his property with intent to defraud, hinder, or delay his creditors of their rights, claims, or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both.

Defendant fraudulently concealing property.
Cr., 135.

SEC. 6520. Every person against whom an action is pending, or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of such property, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the limits of the county, in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

SEC. 6521. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months and by fine not exceeding five hundred dollars.

Common barratry, how punished.
N. S.

SEC. 6522. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt or malicious intent to vex and annoy.

What proof is required.
N. S.

SEC. 6523. Every attorney at law, agent, collector, or other person who collects or receives any money or property on any debt, claim or demand due to another person, and, upon demand made by said person to whom such debt, claim or demand is due, for the space of twenty days, refuses or neglects to pay over said money, or deliver up said property so received to such person making said demand, is guilty of grand or petit larceny according to the amount of the money or value of the property so refused to be delivered over.

Neglect or refusal to pay money.
Cr., 75.

SEC. 6524. Every attorney who, either directly or indirectly, buys or is interested in buying any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

Buying demands or suit by an attorney.
N. S.

SEC. 6525. Every attorney who directly or indirectly, advises in relation to, or aids, or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by any person as District Attorney, or other public prosecutor with whom such person is directly or indirectly connected as a partner, or who, having himself prosecuted or in any manner aided or promoted any action or proceeding in any court as District Attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to, or takes any part in the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from, or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

Attorneys forbidden to defend prosecutions carried on by their partners.
N. S.

SEC. 6526. The preceding section does not prohibit an attorney from defending himself in person as attorney or counsel, when prosecuted, either civilly or criminally.

Limitation of preceding section.
N. S.

SEC. 6527. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, is present at, or takes part, or attempts to take part in the consideration of the charge against the defendant who interposed the challenge or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

Grand juror acting after challenge has been allowed.

SEC. 6528. Every person who gives or offers a bribe to any member of any common council, board of commission-

Bribing members of councils, commissioners, etc.
Cr., 93.

ers, or board of trustees of any county, city or corporation, with intent to corruptly influence such member in his action or any matter or subject pending before the body of which he is a member, and every member of either of the bodies mentioned in this section, who receives or offers to receive any such bribe, is punishable by imprisonment in the Territorial prison for a term not less than one nor more than fourteen years.

Criminal contempts. N. S.

SEC. 6529. Every person guilty of any contempt of court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due its authority;

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law;

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court;

4. Willful disobedience of any process or order lawfully issued by any court;

5. Resistance willfully offered by any person to the lawful order or process of any court;

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question;

7. The publication of a false or grossly inaccurate report of the proceedings of any court.

False certificates by public officers. N. S.

SEC. 6530. Every public officer authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing, containing statements which he knows to be false, is guilty of a misdemeanor.

Disclosing fact of indictment. Cr. P., 218, 219.

SEC. 6531. Every grand juror, district attorney, clerk, judge, or other officer, who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of a presentment or indictment having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

Grand juror disclosing what transpired before jury. N. S.

SEC. 6532. Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself or any other member of the grand jury may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

Maliciously procuring warrant. N. S.

SEC. 6533. Every person who, maliciously and without probable cause, procures a search warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

Omission of duty by public officer. Rev. law, Sec. 8.

SEC. 6534. Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

SEC. 6535. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

Penalty when not prescribed. N. S.

CHAPTER VIII.

CONSPIRACY.

SECTION
6540. Criminal conspiracy defined and punishment fixed.
SECTION
6541. Conspiracy to take mining claims, etc.

SECTION 6540. If two or more persons conspire:

Criminal conspiracy defined, etc. Cr., 110.

1. To commit any crime;
2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime;
3. Falsely to move or maintain any suit, action, or proceeding;
4. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses; or,
5. To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice or the due administration of the laws; they are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or both.

SEC. 6541. In all cases where two or more persons associate themselves together for the purpose of obtaining the possession of any lode, gulch, or placer claim, then in the actual possession of another, by force and violence, or by stealth, and proceed to carry out such purpose by making threats against the party or parties in possession, or who enters upon such lode or mining claim for the purpose aforesaid, or who enters upon or into any lode, gulch, placer claim, quartz mill or other mining property, or, not being upon such property, makes any threats, or makes use of any language, signs or gestures, calculated to intimidate any person or persons at work on said property, from continuing to work thereon or therein, or to intimidate others from engaging to work thereon or therein, every such person so offending is guilty of misdemeanor.

Conspiracy to take mining claim, or to intiminate miners. Act Feb. 5, 1885.

TITLE VII.

OF CRIMES AGAINST THE PERSON.

CHAPTER I.

HOMICIDE.

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6560. Murder defined.
6561. Malice defined.
6562. Degrees of murder.
6563. Punishment of murder.
6564. Petit treason abolished.
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6566. Punishment of manslaughter.
6567. Deceased must die within a year and a day.

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6568. Excusable homicide.
6569. Justifiable homicide by public officers.
6570. Justifiable homicide by other persons.
6571. Bare fear not to justify killing.
6572. Justifiable and excusable homicide not punishable.

Murder defined.
Cr., 15.

SECTION 6560. Murder is the unlawful killing of a human being, with malice aforethought.

Malice defined.
Cr., 15, 16, 17.

SEC. 6561. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

Degrees of murder.
Cr., 17.

SEC. 6562. All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murder are of the second degree.

Punishment of murder.
Cr., 17.

SEC. 6563. Every person guilty of murder in the first degree shall suffer death, and every person guilty of murder in the second degree is punishable by imprisonment in the Territorial prison not less than ten years, and the imprisonment may extend to life.

Petit treason abolished.
N. S.

SEC. 6564. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter.

Manslaughter defined, kinds of.
Cr., 18.

SEC. 6565. Manslaughter is the unlawful killing of a human being, without malice. It is of two kinds:

1. Voluntary— upon a sudden quarrel or heat of passion;

2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

Manslaughter, punishment of.
Cr., 22.

SEC. 6566. Manslaughter is punishable by imprisonment in the Territorial prison not exceeding ten years.

When deceased must die.
Cr., 23.

SEC. 6567. To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done, shall be reckoned the first.

Excusable homicide.
Cr., 30.

SEC. 6568. Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other

lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent;

2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

Justifiable homicide by public officers.

SEC. 6569. Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

1. In obedience to any judgment of a competent court; or, Cr., 29.
2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or, Cr., 28.
3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest. Cr., 28.

Justifiable homicide by other persons.

SEC. 6570. Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or, Cr., 25.
2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or, Cr., 25.
3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to committ a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or, Cr., 27.
4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping or preserving the peace. Cr., 28.

Bare fear not to justify killing. Cr., 26.

SEC. 6571. A bare fear of the commission of any of the offenses mentioned in subdivision 2 and 3 of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

Homicide justifiable and excusable. Cr., 32.

SEC. 6572. The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

CHAPTER II.

MAYHEM.

SECTION
6577. Mayhem defined.
SECTION
6578. Mayhem, how punishable.

Mayhem defined. Cr., 43.

SECTION 6577. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts out or disables the tongue, puts out an eye, slits the nose, ear, or lip, is guilty of mayhem.

Mayhem, how punishable. Cr., 43.

SEC. 6578. Mayhem is punishable by imprisonment in the Territorial prison not exceeding fourteen years.

CHAPTER III.

KIDNAPPING.

SECTION
6584. Kidnapping defined.
SECTION
6585. Punishment of kidnapping.

Kidnapping defined. Cr., 51, 52.

SECTION 6584. Every person who forcibly steals, takes, or arrests any person in this Territory, and carries into another country, state, or county, or who forcibly takes or arrests any person, with a design to take him out of this Territory, without having established a claim according to the laws of the United States or of this Territory, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this Territory or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person, is guilty of kidnapping.

Kidnapping, punishment of. Cr., 51, 52.

SEC. 6585. Kidnapping is punishable by imprisonment in the Territorial prison not less than one nor more than ten years.

CHAPTER IV.

ROBBERY.

SECTION
6590. Robbery defined.
6591. What fear may be an element in robbery.
SECTION
6592. Punishment of robbery.

Robbery defined. Cr., 60.

SECTION 6590. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Fear N. S.

SEC. 6591. The fear which constitutes robbery may be either:

1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his, or member of his family; or,
2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery.

Robbery, punishment of.

SEC. 6592. Robbery is punishable by imprisonment in the Territorial prison not less than five years, and the imprisonment may be extended to life.

CHAPTER V.

ATTEMPTS TO KILL.

SECTION
6597. Administering poison.

SECTION
6598. Assault with intent to commit murder.

SECTION 6597. Every person who, with intent to kill, administers or causes or procures to be administered, to another, any poision or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the Territorial prison not less than ten years, and the imprisonment may be extended to life.

Administering poison. Cr., 42.

SEC. 6598. Every person who assaults another with intent to commit murder, is punishable by imprisonment in the Territorial prison not less than one nor more than fourteen years.

Assault, with intent to murder. Cr., 47.

CHAPTER VI.

ASSAULTS WITH INTENT TO COMMIT OTHER FELONY.

SECTION
6703. Assaults with intent to commit rape.
6704. Other assaults.

SECTION
6705. Administering stupefying drugs.
6706. Assaulting and intimidation.

SECTION 6703. Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, is punishable by imprisonment in the Territorial prison not less than one nor more than fourteen years.

Assault with intent to commit rape. Cr., 42.

SEC. 6704. Every person who is guilty of an assault, with intent to commit any felony, except an assault with intent to commit murder, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the Territorial prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both.

Other assaults. N. S.

SEC. 6705. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anæsthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony.

Administering drugs. N. S.

SEC. 6706. If any person assaults and beats another with a cowhide, stick, or whip, having at the time in his possession, a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person is punishable by imprisonment in the Territorial prison not less than one nor more than four years.

Assaulting and intimidation. Cr., 41.

CHAPTER VII.

DUELS AND CHALLENGES.

SECTION
6711. Duel defined.
6712. Punishment for fighting a duel when death ensues.
6713. Punishment for fighting a duel although death does not ensue.
SECTION
6714. Posting for not fighting.
6715. Duties of officers to prevent duels.
6716. Witness' privilege.

Duel defined. Cr., 35.

SECTION 6711. A duel is any combat with deadly weapons, fought between two or more persons, by previous agreement or upon a previous quarrel.

Duel, punishment for. Cr., 35.

SEC. 6712. Every person guilty of fighting any duel, from which death ensues within a year and a day, is punishable by imprisonment in the Territorial prison not less than one nor more than seven years.

Duel, punishment for. Cr., 36.

SEC. 6713. Every person who fights a duel, although no death or wound so ensue, or who sends or accepts a challenge to fight a duel, is punishable by imprisonment in the Territorial prison or in a county jail not exceeding one year.

Posting for not fighting. Cr., 38.

SEC. 6714. Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challege to fight a duel, or who uses any reproachful or contemptuous language, verbal, written, or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

Duty of officers to prevent duels. Cr., 125.

SEC. 6715. Every judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding one thousand dollars.

Witness' privilege. Cr., 37.

SEC. 6716. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

CHAPTER VIII.

FALSE IMPRISONMENT.

SECTION
6721. False imprisonment defined.
SECTION
6722. False imprisonment, how punished.

False imprisonment defined. Cr., 49.

SECTION 6721. False imprisonment is the unlawful violation of the personal liberty of another.

False imprisonment, how punished. Cr., 49

SEC. 6722. False imprisonment is punishable by fine not exceeding five thousand dollars, or by imprisonment in the county jail not more than one year, or both.

CHAPTER IX.

ASSAULT AND BATTERY.

SECTION
6727. Assault defined.
6728. Assault, how punished.
6729. Battery defined.
SECTION
6730. Battery, how punished.
6731. Assaults with caustic chemicals.
6732. Assaults with deadly weapons.

SECTION 6727. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

Assault defined. Cr., 46.

SEC. 6728. An assault is punishable by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding three months.

Assault, how punished. Cr., 46.

SEC. 6729. A battery is any willful and unlawful use of force or violence upon the person of another.

Battery defined. Cr., 48.

SEC. 6730. A battery is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

Battery, how punished.

SEC. 6731. Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemicals of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the Territorial prison not less than one or more than fourteen years.

Assault with chemical.

SEC. 6732. Every person who commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable by imprisonment in the Territorial prison not exceeding two years, or by fine not exceeding five thousand dollars, or by both.

Assault with deadly weapon. Cr., 47.

CHAPTER X.

LIBEL.

SECTION
6737. Libel defined.
6738. Punishment of libel.
6739. Malice presumed.
6740. Truth may be given in evidence. Jury to determine law and fact.
6741. Publication defined.
6742. Liability of editors and publishers.
SECTION
6743. Publishing a true report of public official proceedings published.
6744. Extent of privilege.
6745. Threatening to publish libel. Offer to prevent publication, with intent to extort money.

SECTION 6737. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule.

Libel defined. Cr., 126.

SEC. 6738. Every person who willfully, and with a malicious intent to injure another, publishes or procures to be published any libel, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding six months.

Libel, punishment of. Cr., 126.

SEC. 6739. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Malice presumed. N. S.

Truth given in evidence. Cr., 126.

SEC. 6740. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact.

Publication defined. N. S.

SEC. 6741. To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel under the circumstances which exposed it to be read or seen by any other person than himself.

Liability of editors, etc. N. S.

SEC. 6742. Each author, editor, and proprietor of any book, newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

Publishing report of public official proceedings. N. S.

SEC. 6743. No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

Extent of privilege. N. S.

SEC. 6744. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

Threatening to publish libel.

SEC. 6745. Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor.

TITLE VIII.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

CHAPTER I.

RAPE, ABDUCTION AND SEDUCTION.

SECTION
6765. Rape defined.
6766. When physical ability must be proved.
6767. Penetration sufficient.
6768. Punishment of rape.
6769. Abduction of women.
SECTION
6770. Seduction for purposes of prostitution.
6771. Abduction.
6772. Admission of minors to places of prostitution.

SECTION 6765. Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances:

Rape defined. Cr., 44.

1. Where the female is under the age of ten years;
2. Where she is incapable through lunacy, or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where she resists; but her resistance is overcome by force or violence;
4. Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic or anæsthetic substance, administered by or with the privity of the accused;
5. Where she is at the time, unconscious of the nature of the act, and this is known to the accused;
6. Where she submits, under a belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

SEC. 6766. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

When physical ability must be proved. N. S.

SEC. 6767. The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

Penetration sufficient. Cr. P., 363.

SEC. 6768. Rape is punishable by imprisonment in the Territorial prison not less than five years, and the imprisonment may be extended for life.

Rape, punishment of. Cr., 44.

SEC. 6769. Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compells her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the Territorial prison not less than two nor more than fourteen years.

Women, abduction of. Cr., 53.

SEC. 6770. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; and every per-

Seduction for purpose of prostitution. N. S.

son who aids or assists in such inveiglement or enticement, is punishable by imprisonment in the Territorial prison not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Abduction.
N. S.

SEC. 6771. Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the Territorial prison not exceeding five years, and a fine not exceeding one thousand dollars.

Admission of minors to places of prostitution.
N. S.

SEC. 6772. Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room, resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein, or any parent or guardian of any such minor who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house or room, shall be guilty of a misdemeanor.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

SECTION
6782. Omitting to provide child with necessaries.
SECTION
6783. Deserting child.
6784. Minors frequenting saloons.

Omitting to provide child with necessaries.

SECTION 6782. Every parent of any child who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

Deserting child.

SEC. 6783. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the Territorial prison not exceeding seven years or in a county jail not exceeding one year.

Minors frequenting saloons.
8 ses., 760.

SEC. 6784. Every proprietor of a saloon who allows any minor between the age of five and sixteen years to frequent or enter his saloon, is guilty of a misdemeanor and punishable by fine of not less than ten and not exceeding twenty-five dollars.

CHAPTER III.

ABORTIONS.

SECTION
6794. Administering drugs, etc., with intent to produce miscarriage.
SECTION
6795. Submitting to an attempt to produce miscarriage.

Administering drugs, etc.
Cr., 42.

SECTION 6794. Every person who provided, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the Territorial prison not less than two nor more than five years.

SEC. 6795. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the Territorial prison not less than one nor more than five years.

Submitting to an attempt to produce miscarriage. N. S.

CHAPTER IV.

CHILD STEALING.

SECTION
6800. Definition and punishment of child stealing.

SECTION 6800. Every person who maliciously, forcibly or fraudulently takes or entices away a child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the Territorial prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars.

Child stealing, definition of. Cr., 54.

CHAPTER V.

BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

SECTION
6805. Bigamy defined.
6806. Exceptions.
6807. Punishment of bigamy.
6808. Marrying a husband or wife of another.

SECTION
6809. Incest.
6810. Crime against nature.
6811. Penetration sufficient to complete crime.
6812. Lewd cohabitation.

SECTION 6805. Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

Bigamy defined. Cr., 127.

SEC. 6806. The last section does not extend:

Exceptions.

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years without being known to such person within that time to be living; nor,

Cr., 127,

2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

Cr., 127.

SEC. 6807. Bigamy is punishable by fine not exceeding two thousand dollars and by imprisonment in the Territorial prison not exceeding three years.

Bigamy, punishment of. Cr., 127.

SEC. 6808. Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be punishable under the provisions of this chapter, is punishable by fine not less than two thousand dollars, or by imprisonment in the Territorial prison not exceeding three years.

Marrying husband or wife of another. Cr., 128.

SEC. 6809. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the Territorial prison not exceeding ten years.

Incest. Cr., 129.

Crime against nature.
Cr., 45.

SEC. 6810. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the Territorial prison not less than five years.

Penetration, etc.
N. S.

SEC. 6811. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

Lewd cohabitation.
14 ses., 1887.

SEC. 6812. If any man and woman, not being married to each other, shall live and cohabit together as man and wife, or shall lewdly and notoriously associate together, such man or woman is guilty of a misdemeanor. [Act of Feb. 10, 1887. In effect June 1, 1887.]

CHAPTER VI.

DISTURBING RELIGIOUS MEETINGS.

SECTION
6820. Disturbing religious meetings.
6821. Selling liquors at camp meeting.
SECTION
6822. Limitation of preceding section.

Disturbing religious meetings.
Cr., 123.

SECTION 6820. Every person who willfully disturbs or disquiets any assemblage of people met for religious worship by noise, profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

Camp meeting, selling liquors at.

SEC. 6821. Every person who keeps or erects a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous, or intoxicating liquors, or any drink of which wines, spirituous, or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles, or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars.

Limitation of preceding section.

SEC. 6822. The provisions of the preceding section do not apply to any person carrying on a regular business in the sale of liquors or other articles which business was established prior to the appointment of the meeting referred to in such section.

CHAPTER VII.

OPIUM SMOKING.

SECTION
6830. Places of resort, sale of, destruction of.
SECTION
6831. Purchase of opium.
6832. Smoking of opium.

Place of resort.

Sale of.

SECTION 6830. Every white person who opens, maintains or keeps any house or place as a resort for the purpose of smoking opium, or any preparation containing opium, or who barters, sells, vends, or gives away opium, or any preparation containing opium for the purpose of being smoked, or that is smoked upon the premises, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine in any sum not exceeding three hundred dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment; and in case any such fine and the costs of prosecution are not paid, any person or persons convicted under this section and sentenced to pay a fine, may be held by the sheriff and compelled to work at hard labor in a chain-gang or otherwise, in charge of a keeper, upon the public highway or elsewhere, or for any person who may contract with the sheriff for such labor, until such fine and costs are fully paid, at the rate of one dollar per day for each day of ten hours hard labor, and any money so received, shall be applied to the payment of the fine and costs.

Destruction of. 14 ses.

And upon any conviction under this section, the court before which such conviction is had, may direct the sheriff, or arresting officer, to destroy any opium, or preparation containing opium, and all pipes, utensils, implements and other things used, had or kept for use, or designed or adopted for use in smoking opium, or any such preparation that may have been used in evidence on the trial of any person convicted under this act, or that may be found upon his person or premises.

Opium, purchase of. 14 ses.

SEC. 6831. Every white person who bargains for, buys, takes or accepts any opium, or preparation containing opium in any house or place to be smoked upon the premises, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Opium, smoking of. 14 ses.

SEC. 6832. Every white person who is found in any house, or place kept or used as a resort, or place for the purpose of smoking opium, or any preparation containing opium, without any lawful business, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding fifty dollars, or by imprisonment not exceeding three months, or by both such fine and imprisonment.

[Act Feb. 10, 1887. In effect June 1, 1887.]

CHAPTER VIII.

INDECENT EXPOSURE, OBSCENE BOOKS AND PRINTS, AND DISORDERLY HOUSES.

SECTION
6840. Indecent exposures, exhibitions and pictures.
6841. Seizure of indecent articles authorized.

SECTION
6842. Keeping disorderly houses.
6843. Publishing notices of means to procure abortion or miscarriage.

Indecent exposures, exhibitions, and pictures. N. S.

SECTION 6840. Every person who willfully and lewdly either:

1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other person to be offended or annoyed thereby; or,

2. Procures, counsels or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book, or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or in-

decent picture or print; or moulds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or,

5. Sings any lewd or obscene song, ballad, or other words, in any public place, or in any place where there are persons present to be annoyed thereby, is guilty of a misdemeanor.

Seizure of indecent articles authorized. N. S.

SEC. 6841. Every person who is authorized or enjoined to arrest any person for a violation of subdivision 3, of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Keeping disorderly houses. N. S.

SEC. 6842. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is disturbed, or who keeps any inn in a disorderly manner, is guilty of a misdemeanor.

Publishing notices of means to procure abortion, etc. N. S.

SEC. 6843. Every person who willfully publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony.

CHAPTER IX.

GAMING.

SECTION
6850. Gaming prohibited. Penalty.
6851. Permitting gambling in houses owned or rented.
SECTION
6852. Witness' privilege.

Gaming prohibited. Act Feb. 5, 1885.

SECTION 6850. Every person who deals, plays, or carries on, opens or causes to be opened, or who conducts, either as owner or employe, whether for hire or not, any game of French monte, three card monte, E. O. or roulette, or the game commonly called the thimble game, or percentage stud-poker, or any other percentage game played with cards, dice, or any other device, for money, checks, credit, or any other representative of value, is punishable by fine of not less than one hundred nor more than three hundred dollars, and shall be imprisoned in the county jail until such fine and costs of prosecution are paid, such imprisonment not to exceed six months.

Permitting gambling in houses, etc. N. S.

SEC. 6851. Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

Witness' privilege. N. S.

SEC. 6852. No person, otherwise competent as a witness, is disqualified from testifying as such concerning the offense of gaming, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against him for any offense concerning which he testified.

CHAPTER X.

OTHER INJURIES TO PERSONS.

SECTION
6860. Acts of intoxicated physicians.
6861. Willfully poisoning food, medicine, or water.
6862. Counterfeiting trade marks.
6863. Selling goods which bear counterfeit trade marks.
6864. Counterfeiting trade mark defined.
6865. Definition of phrase "trade mark," etc.
6866. Defacing marks upon logs, lumber or wood.
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6876. Refusing to issue or obey writ of habeas corpus.
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6878. Concealing persons entitled to benefit of habeas corpus.
6879. Changing brands and marks.
6880. Driving stock from range.
6881. Drover driving other stock from range.
6882. Grazing herd on occupied lands.
6883. Penalty for violation of Chapter III of Title VII of Political Code.
6884. Penalty for not keeping description and hide of slaughtered cattle.
6885. Protection against scab on sheep.
6886. Moving infected sheep.
6887. Auctioneer of live stock.
6888. Conversion of estrays.

SECTION 6860. Every person who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

Acts of intoxicated physicians. N. S.

SEC. 6861. Every person who willfully mingles any poison with any food, drink or medicine, with intent that the same shall be taken by human being, to his injury, and every person who willfully poisons any spring, well, or reservoir of water, is punishable by imprisonment in the Territorial prison for a term not less than one nor more than ten years.

Willfully poisoning food, etc. Cr., 130.

SEC. 6862. Every person who willfully forges or counterfeits or procures to be forged or counterfeited, any trade mark usually affixed by any person to his goods, with intent to pass off any goods to which such forged or counterfeited trade mark is affixed or intended to be affixed, as the goods of such person, is guilty of a misdemeanor.

Counterfeiting trade marks. Cr., 80.

SEC. 6863. Every person who sells or keeps for sale any goods upon or to which any counterfeited trade mark has been affixed, intending to represent such goods as the genuine goods of another, knowing the same to be counterfeited, is guilty of a misdemeanor.

Selling goods which bear counterfeit trade marks. Cr., 81.

SEC. 6864. The phrases "forged trade mark" and "counterfeited trade marks," or their equivalents, as used in this Chapter, includes every alteration or imitation of any trade mark so resembling the original as to be likely to deceive.

"Counterfeited trade marks" defined. Cr., 80, 81.

SEC. 6865. The phrase "trade mark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

"Trade mark" defined. Cr., 80, 81,

SEC. 6866. Every person who cuts out, alters, or defaces any mark made upon any log, lumber, or wood, or puts a false mark thereon with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

Defacing marks, etc., on logs. 13 ses., 178.

Altering brands.
Act Feb. 9, 1881.

SEC. 6867. Every person who marks or brand, alters, or defaces the mark or brand of any horse, mare, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat or pig belonging to another, with intent thereby to steal the same or to prevent indentification thereof by the true owner, is punishable by fine not less than twenty-five nor more than three hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Running iron.
13 ses., 61.

SEC. 6868. Any person who uses, or has, or keeps in his possession any running branding iron, tool, or instrument used by him for running a brand on any live stock, or who changes or disfigures any brand with such instrument, is guilty of grand larceny and punished as provided by law. The possession of such iron or instrument is prima facie evidence of guilt.

Slaughtering cattle.

SEC. 6869. Every person who slaughters any head of cattle at any place more than one-half mile from a house or corral then in actual use is guilty of a misdemeanor.

Persons removing the skin.
12 ses., 126.

SEC. 6870. Any person other than the owner, his servant or agent who skins or removes from the carcass, the skin, hide, or pelt of any neat cattle or sheep found dead or perished, is guilty of a misdemeanor.

Persons slaughtering.
12 ses., 126.

SEC. 6871. Any person who slaughters any head of neat cattle, before the same is distinctly marked or branded, is guilty of a misdemeanor.

Herding sheep.
12 ses., 126.

SEC. 6872. Any person owning or having charge of sheep who herds, grazes, or pastures the same, or permits or suffers the same to be herded, grazed or pastured on any cattle range previously occupied by cattle, or upon any range usually occupied by any cattle grower, either as a spring, summer or winter range for his cattle is guilty of a misdemeanor; but the priority of possessory right between cattle and sheep owners to any range, is determined by the priority in the usual and customary use of such range, either as a cattle or sheep range.

Incestuous marriages.
N. S.

SEC. 6873. Every person authorized to solemnize marriage, who willfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both.

Making false return or record of marriage.
Act Jan. 12, 1877.

SEC. 6874. Every person authorized to solemnize any marriage, who willfully makes a false return of any marriage or pretended marriage to the recorder, and every person who willfully makes a false record of any marriage return is punishable as provided in the preceding section.

Cruel treatment of lunatics, etc.
N. S.

SEC. 6875. Every person guilty of any harsh, cruel or unkind treatment of, or any neglect of duty towards, any idiot, lunatic, or insane person, is guilty of a misdemeanor.

Habeas corpus, refusing to obey.
N. S.

SEC. 6876. Every officer or person to whom a writ of habeas corpus may be directed, who, after service thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

Reconfining persons, etc.
N. S.

SEC. 6877. Every person who, either solely or as a member of a court, knowingly and unlawfully recommits, imprisons, or restrains of his liberty, for the same cause, any person who has been discharged upon a writ of habeas corpus, is guilty of a misdemeanor.

Concealing persons entitled to habeas corpus. 8 ses., 474, Sec. 38.

SEC. 6878. Every person having in his custody or under his restraint or power, any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such writ or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceal or changes the place of his confinement or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

Changing brands and marks. 11 ses., 297.

SEC. 6879. Every person who changes, conceals, defaces, disfigures, or obliterates any brand or mark previously branded, impressed, or marked on any head of live stock, or puts his own or any other brand upon or over any part of any brand previously branded upon any head of live stock, or who makes, or uses any counterfeit of any brand or mark provided for by Chapter Three of Title Seven of the Political Code, is guilty of a misdemeanor.

Driving stock from range. 11 ses., 298.

SEC. 6880. Any person, not the owner or entitled to the possession, who is found knowingly and willfully driving, riding, or leading or assisting to drive, ride or lead any head of live stock away from its usual range, unless he corrals and separates the same at the first suitable corral that can be obtained, is guilty of a misdemeanor.

Drover driving other stock from range. 11 ses., 298.

SEC. 6881. Any stock drover or other person engaged in driving or moving any head or drove of live stock through this Territory, who, without the owner's consent, drives or moves, or assists in driving or moving any head of live stock, the property of another person, away from its usual or accustomed range in this Territory is guilty of a misdemeanor.

Grazing herd on occupied land. 11 ses., 299.

SEC. 6882. Any owner, or other person in charge of any head or drove of live stock who willfully or negligently injures any resident of the Territory by driving or moving such herd or drove from any public highway, and herding or grazing the same on land occupied and improved by any settler in possession of the same is guilty of a misdemeanor.

Violation of certain chapter. 11 ses., 300.

SEC. 6883. Any person violating any of the provisions of Chapter Three of Title Seven of the Political Code as to marks and brands, is guilty of a misdemeanor and, where no other penalty is imposed, must be punished accordingly.

Keeping description of slaughtered cattle, penalty for not. 9 ses., 37.

SEC. 6884. Any person violating any of the provisions of sections 1195 or 1196 of the Political Code, is guilty of a misdemeanor.

Scab on sheep, protection against. 11 ses., 179.

SEC. 6885. Any person who drives or causes to be driven any sheep into any county of this Territory and fails for ten days thereafter to obtain a certificate of the healthfulness of such sheep, is guilty of a misdemeanor and must be fined in any sum not less than two hundred and fifty nor more than five thousand dollars and committed to the county jail at hard labor until the fine and costs are paid.

Moving infected sheep. 12 ses., 60.

SEC. 6886. Any person owning sheep infected with scab or any other infectious disease, who fails to keep the same secure from contact with other sheep, or who moves or drives the same upon any highway, by way, or across any range where other sheep are liable to range or be driven, without first obtaining a written permission of the sheep commissioner as provided in section 1221 of the Political Code, is guilty of a misdemeanor and must be fined in any sum not less than two hundred and fifty nor more than two thousand dollars.

Auctioneer of live stock. 13 ses 33.

SEC. 6887. Any auctioneer failing to comply with the provisions of Chapter Eleven of Title Seven of the Political Code is guilty of a misdemeanor.

Conversion of estrays. Comp. laws, 234.

SEC. 6888. Every taker up of estray property who converts the same to his own use before the title thereto vests in him according to law, or who knowingly and willfully violates any of the provisions of Title Nine of the Political Code, may be fined in any sum not exceeding five hundred dollars.

TITLE IX.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

SECTION
6908. Death from explosions, etc.
6909. Death from collision on railroads.
6910. "Public nuisances" defined.
6911. Unequal damage.
6912. Maintaining a nuisance, a misdemeanor.
6913. Establishing or keeping pest houses within cities, towns or villages.
6914. Putting dead animals in streets, rivers, etc.
6915. Keeping gunpowder, etc. unlawfully.
6916. Apothecary omitting to label drugs, or labeling them wrongfully, etc.
6917. Oleomargarine, etc.
6918. Adulterating food, drugs, liquors, etc.
6919. Disposing of tainted food, etc.
6920. Sale of famished animals.
6921. Setting woods on fire.
6922. Crossing toll bridges, etc., without paying toll.
SECTION
6923. Engineer of locomotive engine omitting to ring bell when crossing highway.
6924. Intoxication of engineers, conductors, or drivers of locomotives on cars.
6925. Placing passengers in cars in front of freight cars.
6926. Violation of duty by employes of railroad companies.
6927. Exposing person infected with any contagious disease in a public place.
6928. Racing upon highways.
6929. Selling liquor to Indians
6930. Selling firearms and ammunition to Indians.
6931. Death from mischievous animals.
6932. Using or exposing animal with glanders.
6933. Animal having glanders to be killed.

Death from explosions, etc.

SECTION 6908. Every person having charge of any steam boiler or steam engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, or for heating, who willfully, or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is punishable by imprisonment in the Territorial prison for not less than one nor more than ten years.

Death from collision on railroads. N. S.

SEC. 6909. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad, car, locomotive, or train, who willfully or negligently suffers or causes the same to collide with another car, locomotive or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment in the Territorial prison for not less than one nor more than ten years.

Public nuisances defined. Cr., 130.

SEC. 6910. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.

Unequal annoyance or damage. Cr., 130.

SEC. 6911. An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

Maintaining a nuisance. Cr., 130.

SEC. 6912. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any lega duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

Pest houses.
N. S.

SEC. 6913. Every person who establishes or keeps, or causes to be established or kept, within the limits of any city, town or village, any pest house, hospital, or place for person affected with contagious or infectious diseases, is guilty of a misdemeanor.

Dead animals in streets.
N. S.

SEC. 6914. Every person who puts the carcass of any dead animal, or the offal of any slaughter pen, corral, or butcher shop, into any river, creek, pond, street, alley, public highway or road in common use, or who attempts to destroy the same by fire within one-fourth of a mile of any city, town or village, is guilty of a misdemeanor.

Gunpowder, unlawful keeping of.
N. S.

SEC. 6915. Every person who makes or keeps gunpowder, nitro-glycerine, or other highly explosive substance, within any city or town, or who carries the same through the streets thereof, in any quantity or manner prohibited by law, or by any ordinance of such city or town, is guilty of a misdemeanor.

Apothecary, false labeling, etc.
N. S.

SEC. 6916. Every apothecary, druggist, or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman, by such person, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues is guilty of a felony.

Oleomargarine, butterine, etc.
13 ses., 61.

SEC. 6917. Every person who sells or keeps for sale, or offers for sale, or otherwise disposes of oleomargarine, butterine, mixture imitating butter, or adulterated butter, under the name of or under the pretense that the same is butter, or keeps for sale or manufactures oleomargarine, butterine, mixture imitating butter, or adulterated butter, without branding the same or the package in which it is contained, on the outside thereof, with the word oleomargarine, butterine or adulterated butter, is guilty of a misdemeanor.

Adulterating food, drugs, liquors, etc.
Cr., 131.

SEC. 6918. Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them with a fraudulent intent to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

Disposing of tainted food.
Cr., 131.

SEC. 6919. Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing the same has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.

SEC. 6920. Every person who slaughters, offers or exposes for sale to the public, any animal or animals that have been confined for forty-eight hours or more without proper food, or twenty hours without water, is guilty of a misdemeanor.

Sale of famished animals. Act of Jan. 27, 1883.

SEC. 6921. Any person who shall willfully or carelessly set on fire, or cause to be set on fire, any timber or prairie lands in this Territory, thereby destroying the timber, grass or grain or any such lands, or any person who shall build a camp fire in any woods, or on any prairie, and leave the same without totally extinguishing such fire, or any railway company which shall permit any fire to spread from its right of way to the adjoining lands, is guilty of a misdemeanor. [Act Feb. 10, 1887. In effect June 1, 1887.]

Setting woods on fire. 14 ses.

SEC. 6922. Every person not exempt from paying tolls, who crosses on any ferry or toll bridge, or passes through any toll gate, lawfully kept, without paying the toll therefor, and with intent to avoid such payment, is punishable by fine not exceeding twenty dollars.

Crossing bridge without paying toll. N. S.

SEC. 6923. Every person in charge of a locomotive engine, who, before crossing any traveled public way, omits to cause a bell to ring or steam whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

Engineer to ring bell, etc. N. S.

SEC. 6924. Every person who is intoxicated while in charge of a locomotive engine, or while acting as conductor or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train dispatcher or as telegraph operator, receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor.

Engineer, intoxication of. N. S.

SEC. 6925. Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor, and if loss of life or limb results from such placing or running, is guilty of felony. The term "frieght car" as used in this section, does not include a baggage, express, or mail car.

Passenger car in front of freight car. N. S.

SEC. 6926. Every engineer, conductor, brakeman, switchtender, or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such officer, agent, or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

Violation of duty by employes of railroad companies. N. S.

SEC. 6927. Every person who willfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

Persons with contagious disease, exposing. N. S.

SEC. 6928. Every person driving any conveyance drawn by horses, upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance, or prevent such other from passing his own, is guilty of a misdemeanor.

Racing upon highways. N. S.

SEC. 6929. Every person who sells or furnishes, or causes to be sold or furnished, intoxicating liquors to any Indian, is guilty of a misdemeanor.

Selling liquor to Indians. Act of Feb. 17, 1879.

Selling firearms to Indians. Act Feb. 17, 1879.

SEC. 6930. Every person who sells or furnishes to any Indian, any firearm, or ammunition therefor, is guilty of a misdemeanor.

Death from mischievous animals. N. S.

SEC. 6931. If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or not kept with ordinary care, kills any human being who has taken all the precautions which circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

Using or exposing animal with glanders. N. S.

SEC. 6932. Any person who shall knowingly sell, or offer for sale, or use, or expose, or who shall cause or procure to be sold or offered for sale, or used, or exposed, any horse, mule, or other animal having the disease known as glanders, or farcy, shall be guilty of a misdemeanor.

Animal having glanders to be killed. N. S.

SEC. 6933. Every animal having glanders, or farcy, shall at once be deprived of life by the owner or person having charge thereof, upon discovering or knowledge of its condition; and any such owner or person omitting or refusing to comply with the provision of this section, shall be guilty of a misdemeanor.

TITLE X.

OF CRIMES AGAINST THE PUBLIC PEACE.

SECTION
6950. "Riot" defined.
6951. "Riot" punishment of.
6952. "Rout" defined.
6953. "Unlawful assembly" defined.
6954. Punishment of rout and unlawful assembly.
6955. Remaining present at place of riot, etc., after warning to disperse.
6956. Magistrates neglecting or refusing to disperse rioters.
6957. Prize fights.
SECTION
6958. Dog or cock fighting.
6959. Disturbing the peace in night time.
6960. Refusing to disperse upon lawful command.
6961. Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.
6962. Forcible entry and detainer.
6963. Returning to take possession of lands after being removed by legal proceedings.

"Riot" defined. Cr., 122.

SECTION 6950. Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

Riot, punishment of.

SEC. 6951. Every person who participates in any riot is guilty of a misdemeanor.

"Rout" defined. Cr., 122.

SEC. 6952. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

"Unlawful assembly" defined. Cr., 121.

SEC. 6953. Whenever two or more persons assemble together to do an unlawful act, separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

"Rout," etc., punishment of. Cr., 121.

SEC. 6954. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Persons remaining at riot. Cr., 119.

SEC. 6955. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Magistrate neglecting to disperse rioters. Cr. Pr., 41.

SEC. 6956. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this Title, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Prize fights. Cr., 39.

SEC. 6957. Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons) either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the Territorial prison not exceeding two years.

Dog or cock fighting. Act Jan. 27, 1883.

SEC. 6958. Every person who participates in dog or cock fighting, or who aids or abets the same by his presence, is guilty of a misdemeanor.

Disturbing the peace in night time.

SEC. 6959. Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood, family or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging, to fight or fighting, or who, on the public streets of any unincorporated town or village, or upon the public highways in such unincorporated town or village, run any horse race, either for a wager or for amusement, or fires any gun or pistol in such unincorporated town or village, or use any vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor.

Refusing to disperse. Cr., 119.

SEC. 6960. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

Exhibiting deadly weapon. Cr., 40.

SEC. 6961. Every person who, not in necessary self-defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner, unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor.

Forcible entry. 8 ses., p. 209.

SEC. 6962. Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

Taking re-possession of land. N. S.

SEC. 6963. Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.

TITLE XI.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THIS TERRITORY.

SECTION
6975. Embezzlement and falsification of accounts by public officers.
6976. Officers neglecting to pay over public moneys.
6977. "Public moneys" as used in the preceding section defined.
6978. Failure to pay over fines and forfeitures received, a misdemeanor.
6979. Refusing to give assessor list of property, or giving false name.
6980. Delivering receipts for poll taxes, etc.
SECTION
6981. Having blank receipts for licenses, etc., other than those prescribed by law.
6982. Refusing to give name of persons in employment, etc.
6983. Carrying on business without license.
6984. Neglect by tax collector.
6985. Neglect by county auditor.
6986. Selling territorial arms.

Embezzlement and falsification of accounts by public officers. Cr., 70.

SECTION 6975. Each officer of this Territory, or of any county, city, towns, or district of this Territory, and every other person charged with the receipt, safe keeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same or any portion thereof to his own use, or to the use of another; or,

Cr., 71.

2. Loans the same or any part thereof; or, having the possession or control of any public money, makes a profit out of, or uses the same for any purpose not authorized by law; or,

3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

Rev. law, Sec. 99.

4. Deposits the same or any portion thereof in any bank, or with any banker or other person, otherwise than on special deposit; or,

5. Changes or converts any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or,

6. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

7. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

8. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

9. Willfully omits to transfer the same, when such transfer is required by law; or,

10. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same; is punishable by imprisonment in the Territorial prison for not less than one nor more than ten years, and is disqualified from holding any office in this Territory.

Officers neglecting to pay over public moneys. Cr., 71.

SEC. 6976. Every officer charged with the receipt, safe keeping, or disbursement of public moneys, who neglects or fails to keep and pay over in the manner prescribed by law, is guilty of felony..

"Public moneys" defined. N. S.

SEC. 6977. The phrase "public moneys," as used in the two preceding sections, included all bonds and evidence of indebtedness, and all moneys belonging to the Territory, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by Territorial, county, district, city, or town officers in their official capacity.

Failure to pay over forfeitures and fines, a misdemeanor. Act Feb. 8, 1883.

SEC. 6978. If any clerk, justice of the peace, sheriff or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

Refusing to give assessor list of property. Rev. law, Sec. 68.

SEC. 6979. Every person who unlawfully refuses upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any Assessor when demanded by such Assessor in the discharge of his official duties, is guilty of a misdemeanor.

Delivering receipts for poll tax, etc. Revenue law, Secs. 65, 83.

SEC. 6980. Every person who uses or gives any receipt except that prescribed by law, as evidence of the payment of any poll tax, road tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

Blank receipts other than those prescribed. Revenue law, Secs. 61, 83.

SEC. 6981. Every person who has in his possession with intent to circulate or sell, any blank licenses or poll tax receipts other than those furnished by the proper officer, is guilty of felony.

Refusing to give name of persons in employment. Rev. law, Sec. 66.

SEC. 6982. Every person who, when requested by the Collector of taxes or licenses, refuses to give to such Collector the name and residence of each man in his employment, or to give such Collector access to the building or place where such men are employed, is guilty of a misdemeanor.

Carrying on business without license. Rev. law, Secs. 84, 89. Cr., 150.

SEC. 6983. Every person who commences or carries on any business, trade, profession or calling, for the transaction or carrying on of which a license is required by any law of this Territory, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor.

Neglect of duty by tax collector. Rev. law, 26.

SEC. 6984. If any Tax Collector or his deputy willfully neglects or refuses to perform any of the duties enjoined on him by the provisions of Title X of the Political Code, he is guilty of a misdemeanor in office, and shall be punished by imprisonment in the county jail not more than one year, or by a fine of not less than two hundred, nor more than one thousand dollars, or by both such fine and imprisonment, and shall be forthwith removed from office.

Neglect of duty of auditor. Rev. Act, 48.

SEC. 6985. If any county auditor neglects or refuses to perform the duties enjoined on him by the provisions of Title X of the Political Code, he is guilty of a felony; and shall be punished by imprisonment in the Territorial prison for not more than one year, or by a fine of not less than two hundred nor more than one thousand dollars, or by both such fine and imprisonment, and shall be forthwith removed from office.

Selling arms, etc.

SEC. 6986. Every person who unlawfully disposes of any arms, equipments, clothing or military stores, the property of this Territory, is guilty of a misdemeanor.

TITLE XII.

OF CRIMES AGAINST PROPERTY.

CHAPTER I.

ARSON.

SECTION
7000. "Arson" defined.
7001. "Building" defined.
7002. "Inhabited building" defined.
7003. "Night time" defined.
7004. "Burning" defined.
7005. Ownership of the building.

SECTION
7006. Degrees of arson.
7007. Arson of the first degree. Arson of the second degree.
7008. Punishment of arson.
7009. Burning or destroying property insured.

SECTION 7000. Arson is the willful and malicious burning of a building, with intent to destroy it.

Arson defined. Cr., 56.

SEC. 7001. Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building," within the meaning of this Chapter.

"Building" defined. Cr., 57.

SEC. 7002. Any building which has usually been occupied by any person lodging therein at night is an "inhabited building," within the meaning of this chapter.

"Inhabited building" defined. Cr., 56.

SEC. 7003. The phrase "night time" as used in this chapter, means the period between sunset and sunrise.

Night time defined. Cr., 56.

SEC. 7004. To constitute a burning, within the meaning of this chapter, it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

"Burning" defined. Cr., 56.

SEC. 7005. To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of, or was actually occupying such building or any part thereof.

Ownership of the building. Cr., 57.

SEC. 7006. Arson is divided into two degrees.

Arson, degrees of. Cr., 56.

SEC. 7007. Maliciously burning in the night time an inhabited building in which there is at the time some human being, is arson in the first degree. All other kinds of arson are of the second degree.

Arson, first degree. Cr., 56.
Arson, second degree. Cr., 57.

SEC. 7008. Arson is punishable by imprisonment in the Territorial prison, as follows:

1. Arson in the first degree, for not less than two years and the imprisonment may be extended to life.
2. Arson in the second degree, for not less than one nor more than ten years.

Arson, punishment of. Cr., 56. Cr., 57.

SEC. 7009. Every person who willfully burns, or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in the possession of such person or of any other, is punishable by imprisonment in the Territorial prison not less than one nor more than ten years.

Burning insured property. Cr., 58.

CHAPTER II.

BURGLARY.

SECTION
7014. "Burglary" defined.
7015. Degrees of burglary.
SECTION
7016. Punishment of burglary.
7017. "Night time" defined.

Burglary defined. Cr., 67.

SECTION 7014. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, or railroad car, with intent to commit grand or petit larceny or any felony, is guilty of burglary.

Burglary, degrees of. Cr., 59.

SEC. 7015. Every burglary committed in the night time is burglary of the first degree, and every burglary committed in the day time is burglary in the second degree.

Punishment of burglary. Cr., 59.

SEC. 7016. Burglary of the first degree is punishable by imprisonment in the Territorial prison for not less than one nor more than fifteen years. Burglary of the second degree is punishable by imprisonment in the Territorial prison for not more than five years.

"Night time" defined. Cr., 59.

SEC. 7017. The phrase "night time" as used in this chapter, means the period between sunset and sunrise.

CHAPTER III.

HAVING POSSESSION OF ANY BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

SECTION
7022. Guilty possession of burglarious implements.
SECTION
7023. Having possession of deadly weapons with intent to commit an assault.

Guilty possession of burglarious implements. Cr., 133.

SECTION 7022. Every person having upon him, or in his possession, a pick-lock, crow, key, bit, or other instrument or tool, with intent feloniously to break or enter into any building, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument above named, so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair, any instrument or thing, knowing, or having reason to believe, that it is intended to be used in committing a misdemeanor or felony, is guilty of misdemeanor. Any of the structures mentioned in the last chapter shall be deemed to be a building within the meaning of this section.

Possession of deadly weapons Cr., 132.

SEC. 7023. Every person having upon him any deadly weapon with intent to assault another, is guilty of a misdemeanor.

CHAPTER IV.

FORGERY AND COUNTERFEITING.

SECTION
7028. Forgery of wills, conveyances, notes, bonds, etc. Uttering forged notes, bonds, etc. Forgery of records and official returns.
7029. Making false entries in records or returns.
7030. Forgery of corporate and public seals.
7031. Punishment of forgery.
7032. Forging telegraphic messages.
7033. Passing or receiving forged notes.
SECTION
7034. Making, passing or uttering fictitious bills, etc.
7035. Counterfeiting coin, bullion, etc.
7036. Punishment for counterfeiting.
7037. Possessing or receiving counterfeit coin, bullion, etc.
7038. Making or possessing counterfeit dies or plates.
7039. Counterfeiting railroad ticket, etc.
7040. Restoring canceled tickets.

Forgery of wills, conveyances, notes, bonds, etc. Cr., 77.

SECTION 7028. Every person who, with intent to defraud another, falsely makes, alters, forges or counterfeits any charter, letters, patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any Controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing, action real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, a lien, or convey any goods, chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage or defraud any person; or who, with intent to defraud, alters, corrupts or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court, or the return of any officer to any process of any court, is guilty of forgery.

Uttering forged notes, etc.

Forgery of records.

Making false entries in records. Cr., 77.

SEC. 7029. Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

Forgery of public and corporate seal. Cr., 87.

SEC. 7030. Every person who, with intent to defraud another, forges, or counterfeits the seal of this Territory, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this Territory, or of any State, or other Territory, government, or country, or who falsely makes, forges or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeited seal or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

Forgery, punishment of.
Cr., 77.

SEC. 7031. Forgery is punishable by imprisonment in the Territorial prison for not less than one nor more than fourteen years.

Forging telegraphic messages.
N. S.

SEC. 7032. Every person who knowingly and willfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who willfully delivers, or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes or conspires to furnish, or causes to be furnished to any agent, operator, or employe, to be sent by telegraph, or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the Territorial prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

Passing forged notes.
Cr., 82.

SEC. 7033. Every person who has in his possession, or receives from another person, any forged promissory note or bank bill, or bills, for the payment of money or property, with the intention to pass the same, or to permit, cause, or procure the same to be uttered or passed, with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank bill made in the form or similitude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or cause, or procure the same to be filled up and completed in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the Territorial prison for not less than one nor more than fourteen years.

Passing, making or uttering fictitious bills, etc.
Cr., 83.

SEC. 7034. Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter or publish, or who has in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, co-partnership, or individual, when, in fact, there is no such bank, corporation, co-partnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is punishable by imprisonment in the Territorial prison for not less than one nor more than fourteen years.

Counterfeiting coin, bullion, etc.
Cr., 78, 88.

SEC. 7035. Every person who counterfeits any of the species of gold or silver coin current in this Territory, or any kind of species of gold dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars, lumps, pieces, or nuggets, or permits, causes or procures the same to be sold, uttered or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

Counterfeiting, punishment of. Cr., 78.

SEC. 7036. Counterfeiting is punishable by imprisonment in the Territorial prison for not less than one nor more than fourteen years.

Possessing counterfeit coin, etc. Cr., 79, 89.

SEC. 7037. Every person who has in his possession, or receives from any other person, any counterfeit gold or silver coin of the species current in this Territory, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the Territorial prison not less than one nor more than fourteen years.

Possessing counterfeit dies, etc. Cr., 84, 88.

SEC. 7038. Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this Territory, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the Territorial prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

Counterfeiting railroad ticket, etc. N. S.

SEC. 7039. Every person who counterfeits, forges, or alters, any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or by any lessee or manager thereof, designated to entitle the holder to ride in the cars of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad company, or any lessee thereof, or any other person, is punishable by imprisonment in the Territorial prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine.

Restoring canceled tickets, etc. N. S.

SEC. 7040. Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates, the cuts, marks, punch-holes, or other evidence of cancellation, from any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or by any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessees thereof, or any other person, or who, with like intent to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail, not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine, imprisonment and fine.

CHAPTER V.

LARCENY.

SECTION
7045. "Larceny" defined.
7046. Larceny of lost property.
7047. Grand and petit larceny.
7048. Grand larceny defined.
7049 Petit larceny.
7050. Punishment of grand larceny.
7051. Punishment of petit larceny.
7052. Dogs property.
7053. Larceny of written instruments.
7054. Value of passage tickets.

SECTION
7055. Written instruments completed but not delivered.
7056. Severing and removing part of the realty declared larceny.
7057. Receiver of stolen property.
7058. Larceny committed and stolen property received out of this Territory.
7059. Stealing water.
7060. Owners of saw logs.

"Larceny," defined.
Cr., 61.

SECTION 7045. Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another.

Larceny of lost property.
N. S.

SEC. 7046. One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny.

Grand and petit larceny.
Cr., 61, 62.

SEC. 7047. Larceny is divided into two degrees, the first of which is termed grand larceny; the second petit larceny.

Grand larceny defined.
Cr., 61.

SEC. 7048. Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding sixty dollars.
2. When the property is taken from the person of another.
3. When the property taken is a horse, mare, gelding, cow, steer, bull calf, mule, jack, goat, jenny, sheep or hog.

Petit larceny,
Cr., 62.

SEC. 7049. Larceny in other cases is petit larceny.

Grand larceny, punishment of,
Cr., 61.

SEC. 7050. Grand larceny is punishable by imprisonment in the Territorial prison for not less than one nor more than fourteen years.

Petit larceny, punishment of,
Cr., 62.

SEC. 7051. Petit larceny is punishable by fine not exceedidg three hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

Dogs property,
Cr., 63.

SEC. 7052. Dogs are property, and of the value of one dollar each, within the meaning of the terms "property" and "value" as used in this chapter.

Larceny of written instruments,
Cr., 64.

SEC. 7053. If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

Value of passage tickets.
Cr., 64.

SEC. 7054. If the thing stolen is any ticket or other paper, or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel, or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance, is the value of such ticket, paper or writing.

Written instruments.
Cr., 64.

SEC. 7055. All the provisions of this chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof, to any person as a purchaser or owner.

Severing and removing part of realty. N. S.

SEC. 7056. The provisions of this chapter apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time.

Receiver of stolen property. Cr., 65.

SEC. 7057. Every person who, for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the Territorial prison not exceeding five years, or in the county jail not exceeding six months, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Larceny committed out of Territory. Cr., 67.

SEC. 7058. Every person who, in another state or country, steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this Territory, may be convicted and punished in the same manner as if such larceny or receiving had been committed in this Territory.

Stealing water. N. S.

SEC. 7059. Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube, or other instrument, with any main, service pipe, or other pipe, or conduit or flume for conducting water, for the purpose of taking water from such main, service pipe, conduit or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor, is guilty of a misdemeanor.

Larceny of saw-logs, cord-wood, etc. 13 ses., 177.

SEC. 7060. Every person who willfully and without authority takes with intent to deprive the owner thereof, any saw logs, timber, lumber, railroad ties, poles, rails, posts or cordwood, owned by any other person on any river or creek, or on the land adjoining, which may have floated down a river or creek, or removes or attempts to remove such logs, timber, lumber, railroad ties, poles, rails, posts or cordwood, or otherwise destroy or injure them, is guilty of a misdemeanor.

CHAPTER VI.

EMBEZZLEMENT.

SECTION
7065. "Embezzlement" defined.
7066. When officer, etc., of any association, guilty of embezzlement.
7067. When carrier or other person having property for transportation, for hire, guilty of embezzlement.
7068. When trustee, banker, etc., guilty of embezzlement.
7069. When bailee, tenant, or lodger guilty of embezzlement.

SECTION
7070. When clerk, agent, or servant guilty of embezzlement.
7071. Distinct act of taking.
7072. Evidence of debt undelivered may be subject of embezzlement.
7073. Claim of title a ground of defense.
7074. Intent to restore the property is no defense.
7075. But actual restoration is a ground for mitigation of punishment.
7076. Punishment for embezzlement.

"Embezzlement" defined. N. S.

SECTION 7065. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.

When officer, etc., guilty of embezzlement. Cr., 69.

SEC. 7066. Every officer of this Territory, or of any county, city, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation, (public or private) who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

Carrier, when guilty of embezzlement. N. S.

SEC. 7067. Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fraudulently appropriates it to any use or purpose inconsistent with the safe keeping of such property and its transportation according to his trust, is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

When banker, etc., guilty of embezzlement. Cr., 75.

SEC. 7068. Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

When bailee, tenant, etc., guilty of embezzlement. Cr., 76.

SEC. 7069. Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement.

When clerk, agent, etc., guilty of embezzlement. Cr., 74.

SEC. 7070. Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement.

Distinct act of taking. N. S.

SEC. 7071. A distinct act of taking is not necessary to constitute embezzlement.

Evidence of debt undelivered, subject of embezzlement. N. S.

SEC. 7072. Any evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.

Claim of title a ground of defense. N. S.

SEC. 7073. Upon any indictment for embezzlement, it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable. But this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against him.

Intent to restore property no defense. N. S.

SEC. 7074. The fact that the accused intended to restore the property embezzled, is no ground of defense or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

Actual restoration, ground for mitigation of punishment. N. S.

SEC. 7075. Whenever, prior to any information laid before a magistrate, charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense, but it authorizes the court to mitigate punishment, in its discretion.

SEC. 7076. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it shall be taken as its value; *Provided,* That if the embezzlement or defalcation be of the public funds of this Territory, or of any county, city, or municipality within this Territory, the offense is a felony, and shall be punishable by imprisonment in the Territorial prison not less than one year nor more than ten years; and the person so convicted shall be ineligible thereafter to any office of honor, trust, or profit under this Territory.

Punishment for embezzlement. N. S.

CHAPTER VII.

EXTORTION.

SECTION
7080. "Extortion" defined.
7081. What threats may constitute extortion.
7082. Punishment of extortion in certain cases.
7083. Punishment of extortion committed under color of official right.

SECTION
7084. Obtaining signature by means of threats.
7085. Sending threatening letters with intent to extort money, etc.
7086. Attempts to extort money or property by means of verbal threats.

SECTION 7080. Extortion is the obtaining of property from another, with his consent, induced by a wrongful force, or under color of official right.

"Extortion" defined. Cr., 113.

SEC. 7081. Fear, such as will constitute extortion, may be induced by a threat, either:

What threats may constitute extortion. Cr., 116.

1. To do an unlawful injury to the person or property of the individual threatened or to any relative of his, or member of his family; or,
2. To accuse him, or any relative of his, or member of his family of any crime; or,
3. To expose, or impute to him or them any deformity or disgrace; or,
4. To expose any secret affecting him or them.

SEC. 7082. Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the Territorial prison not exceeding five years, or by fine not exceeding five thousand dollars, or by both.

Punishment of extortion in certain cases. N. S.

SEC. 7083. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in this Code, is guilty of a misdemeanor.

Punishment of extortion under color of official right. N. S.

SEC. 7084. Every person who, by any extortionate means, obtains from another his signature to any paper or instrument whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

Obtaining signatures by means of threats. N. S.

Sending threatening letters with intent to extort money. Cr., 116.

SEC. 7085. Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in this chapter, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Extorting money by means of verbal threats.

SEC. 7086. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in this chapter, to extort money or property from another, is guilty of a misdemeanor.

CHAPTER VIII.

FALSE PERSONATION AND CHEATS.

SECTION
7090. Marrying under false personation.
7091. Making false return of record of marriage.
7092. Illegal marriage.
7093. Falsely personating another in other cases.
7094. Receiving property in a false character.

SECTION
7095. Fraudulent conveyances.
7096. Obtaining money by false pretenses and by false reports of wealth, etc.
7097. Selling land twice.
7098. Married persons selling land under false representations.
7099. Consignee, false statement by.
7100. Removal of mortgaged property.

Marrying under false representation. Cr., 98.

SECTION 7090. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the convenience of such other, is guilty of a felony.

False return of marriage. Act Jan. 12, 1877.

SEC. 7091. Every person authorized to solemnize any marriage, who willfully makes a false return of any marriage or pretended marriage to the recorder, and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section.

Illegal marriage. Act Jan. 12, 1877.

SEC. 7092. Every person who undertakes or pretends to join others in marriage, knowing that he is not by law authorized so to do, or knowing of any legal impediment to the proposed marriage, is guilty of a misdemeanor.

Falsely personating another in other cases. Cr., 98.

SEC. 7093. Every person who falsely personates another, and in such assumed character, either:

1. Becomes bail or surety for such party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

2. Verifies, publishes, acknowledges or proves in the name of another person, any written instrument, with the intent that the same may be recorded, delivered and used as true; or,

3. Does any act whereby, if it were done by the person falsely personated, he might in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture or penalty, or whereby any benefit might accrue to the party personating, or to any other person, is punishable by imprisonment in the county jail not exceeding two years, or by a fine not exceeding five thousand dollars.

Receiving property in a false character. Cr., 99.

SEC. 7094. Every person who falsely personates another, and in such assumed character receives any money or property knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or that of another person, or to deprive the owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

Fraudulent conveyances. Cr., 135.

Sec. 7095. Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had, made, or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies or defends the same, or any of them, as true, and done, had or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him or them, conveyed as aforesaid, or any part thereof, is guilty of a misdemeanor.

Obtaining money under false pretenses. Cr., 136, 137.

Sec. 7096. Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets into possession of money or property, is punishable by imprisonment in the county jail, not exceeding one year, and by fine not exceeding three times the value of the money or property so obtained.

Selling land twice. Cr., 138.

Sec. 7097. Every person who, after once selling, bartering, or disposing of any tract of land or town lot, or after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers, sells, barters, or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter, or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the Territorial prison not less than one nor more than five years, or by fine not exceeding five thousand dollars or by both.

Married persons selling lands under false representations. N. S.

Sec. 7098. Every married person who falsely and fraudulently represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representation willfully conveys or mortgages the same, is guilty of felony.

Consignee, false statement by. N. S.

Sec. 7099. Every commission merchant, broker, agent, factor, or consignee, who shall willfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant, agent, broker, factor, or consignee, a false statement concerning the price obtained for, or the quality or quantity of any property consigned or intrusted to such commission merchant, agent, broker, factor, or consignee, for sale, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding three hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Removal of mortgaged property. 13 ses., 76.

SEC. 7100. Every mortgagor of property mortgaged in pursuance of the provisions of Chapter Four of Title Twelve of the Civil Code, who, while such mortgage remains unsatisfied in whole or in part, willfully removes from the county or counties where such mortgage is recorded, or destroys, conceals, sells, or in any manner disposes of the property mortgaged, or any part thereof, without the consent of the holder of the mortgage, is guilty of larceny.

CHAPTER IX.

FALSE WEIGHTS AND MEASURES.

SECTION
7105. "False weight" and "measure" defined.
7106. False weights and measures.
7107. Using false weights or measures.
7108. Stamping false weight, measure, or tare on cask or packages.

SECTION
7109. Weight by ton or pound.
7110. Fraudulent scales for weighing or assaying ores.
7111. Fraudulent alteration of the value of ores and bills of sale and certificates of such value.

"False weight," etc., defined.

SECTION 7105. A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

False weights and measures. Cr., 139.

SEC. 7106. Every person who knowingly sells any goods, wares, or merchandise, or any valuable thing, by false weight or measure, or knowingly uses false measures at any mill in taking toll for grinding corn, wheat, rye, or other grain, is guilty of a misdemeanor.

Using false weights or measures. Cr., 139.

SEC. 7107. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

Stamping false weight on packages, etc. Cr., 139.

SEC. 7108. Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells, or offers for sale, any cask or package so marked, is guilty of a misdemeanor.

Weight by ton or pound. N. S.

SEC. 7109. In all sales of coal, hay, and other commodities, usually sold by the ton or fractional parts thereof, the seller must give to the purchaser full weight, at the rate of two thousand pounds to the ton; and in all sales of articles which are sold in commerce by avoirdupois weight, the seller must give to the purchaser full weight, at the rate of sixteen ounces to the pound; and any person violating this section is guilty of a misdemeanor.

Fraudulent scales for weighing or assaying ores. Act Feb. 5, 1885.

SEC. 7110. Every person, association or corporation, or the agent of any person, association or corporation, engaged in the business of milling, sampling, concentrating, reducing, shipping or purchasing ores, who keeps or uses any false or fraudulent scales or weights for weighing ore, or who keeps or uses any false or fraudulent assay scales or weights for ascertaining the assay value of ore, knowing them to be false, every person so offending is guilty of a misdemeanor, and is punishable by a fine in any sum not exceeding one thousand dollars, or by imprisonment in the county jail for a term of not more than one year, nor less than one month, or by both such fine and imprisonment.

Fraudulent alteration of value of ores, etc. Act Feb. 5, 1885.

SEC. 7111. Every person, corporation or association, or the agent of any person, corporation or association, engaged in milling, sampling, concentrating, reducing, shipping or purchasing of ores in this Territory, who in any manner knowingly alters or changes the true value of any ores delivered to him or them, so as to deprive the seller of the result of the correct value of the same, or who issues any bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value, and total amount paid for any lot or lots of ore purchased, or who, by any secret understanding or agreement with another, issues a bill of sale or certificate of purchase that does not exactly and truthfully state the actual weight, assay value and total amount paid for any lot or lots of ore purchased, or who by any secret understanding or agreement with another issues a bill of sale or certificate of purchase that does not truthfully and correctly set forth the weight, assay value and total amount paid for any lot or lots of ore purchased by him is guilty of a misdemeanor, and shall be punished as provided in the preceding section.

CHAPTER X.

FRAUDS IN THE MANAGEMENT OF CORPORATIONS.

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7114. Frauds in subscriptions for stock of corporations.
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SECTION
7121. Officer of corporation publishing false reports.
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7123. Director of a corporation presumed to have knowledge of its affairs.
7124. Director present at meeting, when presumed to have assented to proceedings.
7125. Director absent from meeting, when presumed to have assented to proceedings.
7126. Foreign corporations.
7127. "Director" defined.

SECTION 7114. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Frauds in subscription for stock of corporations. N. S.

SEC. 7115. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board, with intent to deceive such officer or board in respect thereto, is guilty of a misdemeanor.

Frauds in procuring organization, etc., of corporation. N. S.

SEC. 7116. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement, or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

Unauthorized use of names in prospectus, etc. N. S.

SEC. 7117. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either:

Directors, misconduct of. N. S.

1. To make any dividend, except from the surplus profits arising from the business of the corporation; and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation, is guilty of a misdemeanor.

Savings bank officer overdrawing his account. N. S.

SEC. 7118. Every officer, agent, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, notes, or funds of such bank, is guilty of a misdemeanor.

Receiving deposits in insolvent banks. N. S.

SEC. 7119. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

Frauds in keeping accounts in books. N. S.

SEC. 7120. Every director, officer, or agent of any corporation or joint stock association who knowingly receives or possesses himself of any property of such corporation or association otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making, any false entries, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the Territorial prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, or a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Officer of corporation publishing false reports. N. S.

SEC. 7121. Every director, officer or agent of any corporation or joint stock association, who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, is guilty of a misdemeanor.

Officer to permit an inspection. N. S.

SEC. 7122. Every officer or agent of any corporation, having or keeping an office within this Territory, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

Director presumed to have knowledge of affairs of corporation. N. S.

SEC. 7123. Every director of a corporation or joint stock association, is deemed to possess such a knowledge of the affairs of his corporation, as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter.

Director present at meeting, what presumed. N. S.

SEC. 7124. Every director of a corporation or a joint stock association, who is present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires his dissent therefrom to be entered in the minutes of the directors.

Director absent from meeting, what presumed. N. S.

SEC. 7125. Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the Board of Directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

Foreign corporations. N. S.

SEC. 7126. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another Territory, State, government, or country, if it was one carrying on business or keeping an office therefor within this Territory.

"Director" defined. N. S.

SEC. 7127. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CHAPTER XI.

MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES AND TELEGRAPHS.

SECTION
7132. Injuries to railroads and railroad bridges.
7133. Injuries to highways, private ways, and bridges.
7134. Injuries to toll houses, and gates.
7135. Injuries to milestones and guide boards.
SECTION
7136. Injuring telegraph lines.
7137. Taking water from or obstructing canals.
7138. Obstructing public road.
7139. Water across public highway.

Injuries to railroads and railroad bridges. N. S.

SECTION 7132. Every person who maliciously, either:

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branchway, switch, turnout, bridge, viaduct, culvert, embankment, station house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or of any switch, branch, branchway, or turnout connected with any railroad; is punishable by imprisonment in the Territorial prison not exceeding five years, or in the county jail not less than six months.

Injuries to highways, etc. Cr., 130.

SEC. 7133. Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the Territorial prison not exceeding five years, or in the county jail not exceeding one year.

Injuries to toll houses.

SEC. 7134. Every person who maliciously injures or destroys any toll house or turnpike gate, is guilty of a misdemeanor.

Injuries to milestones, etc. Act Feb. 1. 1881.

SEC. 7135. Every person who maliciously removes or injures any mile board, post, or stone, or guide post, or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

Injuring telegraph lines. N. S.

SEC. 7136. Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph or telephone, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

Taking water from or obstructing canals. N. S.

SEC. 7137. Every person who shall without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume, or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining, or domestic uses, or who shall, without like authority, raise, lower, or otherwise disturb any gate or other appurtenance thereof used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed into any such canal, ditch, flume, or reservoir, any rubbish, filth, or obstruction to the free flow of the water, is guilty of a misdemeanor.

Obstructing public road. 13 ses., 172.

SEC. 7138. Any person who obstructs, injures, or damages any public road, street or highway, either by placing obstruction therein or by digging in, deepening or deviating the water of any stream, or by placing any obstruction in any ditch or stream within or along any public road, street or highway, or by placing or constructing any obstruction, ditch or embankments upon their own or other lands, so as to make or cause any water to flow upon or impair any public road, street or highway, or rides or drives upon and along the sidewalk of any road, street or highway, whenever such sidewalk has been graded or graveled, located or designated by any order of the Board of Commissioners or city council, or prepared in any other manner dedicating and designating the same for and to that particular use and purpose, either by the property owner or by the public, or in any other manner injures or obstructs any public road, street or highway, is guilty of a misdemeanor.

Water across public highway. 13 ses., 173.

SEC. 7139. Any person who runs water across any public highway, road or street, without first constructing a good and sufficient ditch or ditches to convey the same, who fails to bridge such ditch or ditches, or to keep such bridge or bridges, or ditches in good repair, and all persons, companies or corporations who suffer any water used by them for the purpose of irrigation, or any other purposes, to flow into or upon any public highway, road or street, in any other manner than that authorized by law, is guilty of a misdemeanor, and upon conviction thereof must be fined in any sum not less than twenty-five nor more than fifty dollars, together with the costs of suit, and for a second offense, double said fine and costs; and it is hereby made the duty of all road supervisors, constables and marshals, to make complaint before the proper court, for violations of this section, whenever notified or having knowledge thereof.

TITLE XIII.

MALICIOUS MISCHIEF.

SECTION
7150. Malicious mischief in general defined.
7151. Specifications in following sections not restrictive of last section.
7152. Poisoning cattle.
7153. Killing, maiming, or torturing animals.
7154. Cruelty to animals, penalty.
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7156. Burning buildings and other property not the subject of arson.
7157. Using gunpowder, etc., in destroying or injuring any building.
7158. Malicious injuries to freehold.
7159. Injuries to standing crops, etc.
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SECTION
7162. Destroying or injuring bridges, dams, levees, water dams, etc.
7163. Burning or injuring rafts. Setting adrift vessels.
7164. Destroying or tearing down notices, etc., before expiration of time for which they were to remain set up.
7165. Injuring or destroying written instrument.
7166. Opening or publishing sealed letters.
7167. Disclosing contents of telegraphic messages.
7168. Altering telegraphic messages.
7169. Opening sealed envelopes containing telegraphic dispatches.
7170. Injuring works of art or improvements in any city, town, or village.
7171. Breaking or obstructing gas or water pipes, etc.
7172. Destruction of notice or monument.

Malicious mischief defined. Cr., 143.

SECTION 7150. Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this Code, is guilty of a misdemeanor.

Specifications in following sections.

SEC. 7151. The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the following section.

Poisoning cattle. Cr., 142.

SEC. 7152. Every person who willfully administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the Territorial prison not exceeding three years, or in the county jail not exceeding one year, and a fine not exceeding five hundred dollars.

Killing or torturing animals. Cr., 143.

SEC. 7153. Every person who maliciously kills, maims, or wounds an animal, the property of another, or who maliciously and cruelly beats, tortures, or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

Cruelty to animals. Act Jan. 27, 1883.

SEC. 7154. Every person who confines, or causes the confined, in any corral or other enclosure, without proper food for the space of forty-eight hours or more, or water for the space of twenty-four hours or more, any animal or animals, is guilty of a misdemeanor.

Cruelly whip, beat, or illtreat. Act Jan. 27, 1883.

SEC. 7155. Every person who cruelly whips, beats, or otherwise unnecessarily ill-treats any animal, or worries with dog any cattle, horses, sheep or hogs, shall be guilty of a misdemeanor.

Burning buildings, etc., other property, not subject of arson. Cr., 57.

SEC. 7156. Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any building, snowshed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass or tree, or any fence, not the property of such person, is punishable by imprisonment in the Territorial prison for not less than one nor more than ten years.

Using gunpowder, etc., in destroying buildings. N. S.

SEC. 7157. Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of felony.

Malicious injuries to freeholders. Cr., 144.

SEC. 7158. Every person who willfully commits any trespass, by either:

1. Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another; or,
2. Carrying away any kind of wood or timber lying on such lands; or,
3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or,
4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or,
5. Digging, taking, or carrying away from any land in any of the cities of the Territory, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or part, without the license of the proper authorities, any earth, soil, or stone, is guilty of a misdemeanor.

Injuries to standing crops. N. S.

SEC. 7159. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code, is guilty of a misdemeanor.

Removing, defacing, or altering landmarks. Cr., 73.

SEC. 7160. Every person who either:

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land; or,
2. Maliciously defaces or alters the marks upon any such monument; or,
3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks, is guilty of a misdemeanor.

Destroying or injuring jails. Cr., 147.

SEC. 7161. Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, and by imprisonment in the Territorial prison not exceeding five years.

Destroying or injuring bridges, dams, levees, water dams, etc. Cr., 146.

SEC. 7162. Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed, or marsh land, or to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or any embankment necessary to the same, or either of them; or willfully or maliciously makes, or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the Territorial prison not exceeding two years, or by both.

Burning or injuring rafts. Cr., 145.

SEC. 7163. Every person who willfully or maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, the property of another, is punishable by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both.

Destroying or tearing down notices, etc. Cr., 132.

SEC. 7164. Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from or of any law of the United States or of this Territory, or any proclamation, advertisement, or notification set up at any place in this Territory, by authority of any law of the United States or of this Territory, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

Destroying written instrument. Cr., 72.

SEC. 7165. A person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the Territorial prison for not less than one nor more than five years.

Opening or publishing sealed letters. Cr , 117.

SEC. 7166. Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

***Disclosing contents of telegraphic messages.* N. S.**

SEC. 7167. Every person who willfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, is punishable by imprisonment in the Territorial prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

Altering telegraphic messages. N. S.

SEC. 7168. Every person who willfully alters the purport, effect, or meaning of a telegraphic message, to the injury of another, is punishable as provided in the preceding section.

Opening sealed envelopes containing telegrams. N. S.

SEC. 7169. Every person not connected with any telegraph office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in the two preceding sections.

Injuring works of art, improvements, etc. Cr , 141.

SEC. 7170. Every person not the owner thereof, who willfully injures, disfigures or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground, or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

SEC. 7171. Every person who willfully breaks, digs up, obstructs or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

Breaking or obstructing gas or water pipes. N. S.

SEC. 7172. Every person who intentionally defaces, obliterates, tears down or destroys any notice posted on any lode, or placer mining claim, or ditch, or water right, or location, or who removes, takes down or destroys any post or monument erected or placed to mark or indicate any such claim, right or location, or any part or boundary thereof, or part thereon, is guilty of a misdemeanor.

Destruction of notice or monument.

TITLE XIV.

MISCELLANEOUS CRIMES.

CHAPTER I.

Violation of Game and Fish Laws.

Section
7185. Willful killing of game. Penalty.
7186. Unlawful to kill.
7187. Quails and partridges. Eggs.
7188. Sage hens, pheasants, grouse, etc.
7189. Wild ducks. Geese.
7190. Evidence of guilt.
7191. Fishing tackle.
7192. Bait.

Section
7193. Unlawful to use dams and nets.
7194. Penalty.
7195. Fines, how collected.
7196. Having game in possession during the time that killing is prohibited.
7197. Use of poisonous or explosive substances in fishing prohibited.

Willful killing of game, when penalty. Act Feb. 8, 1883.

Section 7185. Every person who willfully shoots or otherwise causes to be killed, or offers for sale any buffalo, elk, deer, antelope or mountain sheep, between the first day of January and the first day of September in each year, is guilty of a misdemeanor, and is punishable by fine not less than twenty-five nor more than one hundred dollars for each offense committed.

Unlawful to kill, penalty. Act Feb. 8, 1883.

Sec. 7186. It is unlawful for any person at any time to kill or destroy any of the game mentioned in the last section, solely for the purpose of obtaining the hides or horns, or to chase the same with dogs or to ship the same out of the Territory for speculative purposes. Any person so doing is guilty of a misdemeanor and is punishable by fine in any sum not less than twenty-five nor more than one hundred dollars.

Quail and partridges, eggs of birds, penalty. Act Feb. 8, 1883.

Sec. 7187. It is not lawful for any person to kill or destroy any quail or partridge, or trap or carry away the same or destroy their eggs, prior to the first day of September, A. D. 1887. Any person so doing is guilty of a misdemeanor, and is punishable by fine not less than fifty nor more than one hundred dollars, for each offense, and one-half of the fines arising from the provisions of this chapter shall be given to the person informing.

Time during which certain game shall not be killed. Act Feb. 8, 1883.

Sec. 7188. Every person who shoots or causes to be killed, any pheasant, grouse, or prairie chicken, between the first day of February and the fifteenth day of July of each year is guilty of a misdemeanor, and is punishable by fine not less than five dollars nor more than twenty-five dollars for each offense committed.

Time during which ducks shall not be killed. Act Feb. 8, 1883.

Sec. 7189. Every person who willfully shoots or causes to be killed any species of wild duck or goose between the fifteenth day of April and the first day of August of each year, is guilty of a misdemeanor, and is punishable by fine not less than five nor more than twenty-five dollars for each offense committed.

Evidence of guilty. Act Feb. 8, 1883.

Sec. 7190. The possession of the dead bodies of any of the animals or birds mentioned in this chapter, by any person, shall be taken as *prima facie* evidence that such person is guilty of killing the same.

Fishing tackle. Act Feb. 8, 1883.

Sec. 7191. The only lawful way that fish can be taken in any of the streams of this Territory is by fishing tackle, consisting of a rod or pole, line and hook.

SEC. 7192. Said hook must not be baited with any drug or substance poisonous to any kind of fish.

Bait. Act Feb. 8, 1883.

SEC. 7193. It is unlawful for any person in this Territory to make any dams, or use any nets, seines, fish-traps, or any similar device or means for catching fish, or to use any drug, poison or giant powder, or other explosive compounds, intending to catch, kill or destroy any species of fish; *Provided*, That no person is prohibited by this chapter from the catching of salmon, salmon trout, or sturgeon with seine or spear.

Unlawful to use fish traps and explosives. Act Feb. 8, 1883.

SEC. 7194. Every person, company or corporation, guilty of violating either of the three preceding sections is guilty of a misdemeanor, and is punishable by fine not less than twenty-five nor more than one hundred dollars for each offense committed.

Penalty. Act Feb. 8, 1883.

SEC. 7195. One-half of all fines collected under this chapter must be paid into the county treasury for the benefit of the common schools of the county wherein the offense was committed, and one-half to the person informing the nearest magistrate that such offense has been committed.

Fines, how appropriated. Act Feb. 8, 1883.

SEC. 7196. Every person who buys, sells or has in his possession any of the game enumerated in this chapter, within the time the taking or killing thereof is prohibited, except such as are tamed or kept for show or curiosity, is guilty of a misdemeanor.

Possessing game during unlawful time. N. S.

SEC. 7197. Every person who puts into the waters of this Territory, or who uses any poisons, or explosive substances, for the purpose of taking or destroying fish, is guilty of a misdemeanor, and punished as provided in section 7194.

Poisonous or explosive substances. N. S.

CHAPTER II.

OF OTHER AND MISCELLANEOUS OFFENSES.

SECTION
7205. Neglect or postponement out of regular order of telegraphic messages.
7206. Agent, operator, or employe using information from messages.
7207. Clandestinely learning the contents of a telegraphic message.
7208. Vagrants.
7209. Issuing or circulating paper money.
SECTION
7210. Sending letters threatening to expose another.
7211. Abuse of school teachers.
7212. Offenses upon and against railroads.
7213. Conductor and other employes may arrest.
7214. To be taken before magistrate. Jurisdiction.

SECTION 7205. Every agent, operator, or employe of any telegraph office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted, or delivered unless the charges thereon have been paid or tendered.

Neglect or refusal to deliver telegraphic messages. N. S.

SEC. 7206. Every agent, operator, or employe of any telegraph office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator or employe, or trades or speculates upon any such information so obtained, or in any manner

Operator, etc., using information from messages.

turns, or attempts to turn the same to his own account, profit or advantage, is guilty of a misdemeanor.

Clandestinely learning contents of telegram.

SEC. 7207. Every person who, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or willfully and fraudulently, or clandestinely learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is guilty of a misdemeanor.

Vagrants. Act Feb. 4, 1885.

SEC. 7208. Every person without visible means of living, who has the physical ability to work, and who does not for the space of ten days seek employment, nor labor when employment is offered him; every healthy beggar who solicits alms as a business; every person who roams about from place to place without any lawful business; every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night, or who lodges in any barn, shed, shop, outhouse, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof, every lewd and dissolute person, who lives in and about houses of ill-fame, and every common prostitute and common drunkard, is a vagrant, and is punishable by imprisonment in the county jail not exceeding ninety days.

Issuing paper money. Cr., 149.

SEC. 7209. Every person who makes, issues, or puts in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense, is guilty of a misdemeanor, and for each and every subsequent offense, is guilty of a felony.

Sending threatening letters to expose another. Cr., 116.

SEC. 7210. Every person who knowingly and willfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

Abuse of school teachers. N. S.

SEC. 7211. Every parent, guardian, or other person, who upbraids, insults or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor.

Offenses against railroads. 14 ses.

SEC. 7212. (Sec. 1.) Any person disturbing the peace of any traveler or any railway train, or breaking the seal or forcibly entering any car, or disturbing the contents of any car, or breaking any package therein, or breaking any package left at any depot for transportation or delivery, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one hundred ($100.00) dollars, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

Conductor may arrest. 14 ses.

SEC. 7213. (Sec. 2.) A conductor, or other person having charge of any railway train in this Territory, section foreman or station agent of any railway company shall have power to arrest, without a warrant, any person violating any provision of Section 1 of this act.

Jurisdiction. 14 ses., •

SEC. 7214. (Sec. 3.) When an arrest is made without a warrant by any person authorized to make arrests under the provisions of this act, the person arrested without unnecessary delay must be taken to the most accessible magistrate, and a complaint stating the charge against the party must be made before such magistrate, and the magistrate before whom such charge is made, if the offense is triable before him, shall have full jurisdiction over such offense and the defendant, to try and determine said offense. If he have not jurisdiction, he must send the papers and the defendant to the most convenient magistrate that has jurisdiction, and said last named magistrate shall have full power to try and determine said offense.

[Act Feb. 10, 1887. In effect immediately.]

TITLE XV.

GENERAL PROVISIONS.

SECTION
7230. Acts made punishable by different provisions of this Code.
7231. Contempts, how punishable.
7232. Offenses; misdemeanor, how punished.
7233. Aiding in misdemeanor.
7234. Attempts to commit crimes, when punishable.
7235. Attempts to commit crimes, how punishable.
7236. Restrictions upon the preceding sections.
SECTION
7237. Second term of imprisonment when to commence.
7238. When term of imprisonment commences, etc.
7239. Civil rights of convict suspended.
7240. Civil death.
7241. Limitations on two preceding sections.
7242. Person of convict protected.
7243. Forfeitures.

Acts made punishable by different provisions of this code. N. S.

SECTION 7230. An act or omission which is made punishable in different ways by different provisions of this Code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other.

Contempts, how punishable. N. S.

SEC. 7231. A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

Common law offenses, fines, imprisonment, etc. Cr., 151.

SEC. 7232. All offenses recognized by the common law as crimes and not herein enumerated, are punishable, in case of felony, by imprisonment in the Territorial prison for a term not less than one year nor more than five years; and in case of misdemeanors, by imprisonment in the county jail for a term not exceeding six months or less than one month, or by fine not exceeding five hundred dollars, or both such fine and imprisonment. And whenever any fine is imposed for any felony or misdemeanor, whether such be by statute or at common law, the party upon whom the fine is imposed shall be committed to the county jail, when not sentenced to the Territorial prison, until the fine is paid; and he shall be imprisoned at the rate of one day for each two dollars until such fine is paid.

Aiding in misdemeanors. N. S.

SEC. 7233. Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids another in the commission of such act is guilty of a misdemeanor.

Attempts to commit crimes, when punishable. N. S.

SEC. 7234. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

Attempts to commit crimes, how punishable.

SEC. 7235. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offense so attempted is punishable by imprisonment in the Territorial prison for five years, or more, or by imprisonment in the county jail, the person guilty of such attempt is punishable by imprisonment in the Territorial prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the Territorial prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted. Cr., 158.

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

Restrictions upon preceding sections. N. S.

SEC. 7236. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Second term of imprisonment, when to commence. Cr. P., 442.

SEC. 7237. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

When term of imprisonment commences.

SEC. 7238. The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

Civil rights of convict suspended. Cr., 153.

SEC. 7239. A sentence of imprisonment in a Territorial prison for any time less than for life suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment.

Civil death Cr., 153.

SEC. 7240. A person sentenced to imprisonment in the Territorial prison for life is thereafter deemed civilly dead.

Limitations on preceding sections. N. S.

SEC. 7241. The provisions of the last two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property.

Person of convict protected. N. S.

SEC. 7242. The person of a convict sentenced to imprisonment in the Territorial prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

Forfeitures. N. S.

SEC. 7243. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this Territory, in the nature of a deodand, or where any person shall flee from justice, are abolished.

PART II.—OF CRIMINAL PROCEDURE.

PRELIMINARY PROVISIONS.

SECTION
7350. No person punishable but on legal conviction.
7351. Public offenses, how prosecuted.
7352. Criminal action defined.
7353. Parties to a criminal action.
7354. The party prosecuted known as defendant.
7355. Rights of defendant in a criminal action.
SECTION
7356. Second prosecution for the same offense prohibited.
7357. No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.
7358. No person to be convicted but upon verdict or judgment.

Person punishable on legal conviction. Cr. P., 5.

SECTION 7350. No person can be punished for a public offense, except upon a legal conviction in a court having jurisdiction thereof.

Public offenses, how prosecuted. Cr. P., 6.

SEC. 7351. Every public offense must be prosecuted by indictment, except:

1. Where proceedings are had for the removal of civil officers of the Territory;

2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which this Territory may keep, with the consent of Congress, in time of peace;

3. Offenses tried in Justices' and Probate Courts.

Criminal action defined. Cr. P., 7.

SEC. 7352. The proceedings by which a party charged with public offense is accused and brought to trial and punishment, is known as a criminal action.

Parties to a criminal action. Cr. P., 8.

SEC. 7353. A criminal action is prosecuted in the name of the Territory of Idaho, as a party, against the person charged with the offense.

Party prosecuted known as defendant. Cr. P., 9.

SEC. 7354. The party prosecuted in a criminal action, is designated in this Code as the defendant.

Rights of a defendant in a criminal action. Cr. P., 10.

SEC. 7355. In a criminal action the defendant is entitled:

1. To a speedy and public trial;

2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.

Second prosecution prohibited, when. Cr. P., 11.

SEC. 7356. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

No person need be a witness against himself, etc. Cr. P., 12.

SEC. 7357. No person can be compelled in a criminal action, to be a witness against himself, nor can a person charged with a public offense, be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

Person not to be convicted but upon verdict. Cr. P., 13.

SEC. 7358. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon a judgment of a Probate or Justice's Court, a jury having been waived, in a criminal case not amounting to a felony.

TITLE I.

OF THE PREVENTION OF PUBLIC OFFENSES.

CHAPTER I.

OF LAWFUL RESISTANCE.

SECTION
7368. Lawful resistance, by whom made.
7369. By the party, in what cases and to what extent.
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7370. By other parties, in what cases.

SECTION 7368. Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured;
2. By other parties.

Lawful resistance, by whom made.
Cr. P., 14.

SEC. 7369. Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person, or his family, or some member therof.
2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

By party, in what cases and to what extent.
Cr. P., 15.

SEC. 7370. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

By other parties, in what cases.
Cr. P., 16.

CHAPTER II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

SECTION
7375. Intervention of officers, in what cases.
SECTION
7376. Persons acting in their aid justify.

SECTION 7375. Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace;
2. By forming a police in cities and towns, and by requiring their attendance in exposed places;
3. By suppressing riots.

Intervention of officers, in what cases.
Cr. P., 17.

SEC. 7376. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

Persons actin in their aid justified.
Cr. P., 18.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

SECTION
7380. Information of threatened offense.
7381. Examination of complainant and witnesses.
7382. Warrant of arrest.
7383. Proceedings on charges being controverted.
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7385. Security to keep the peace, when required.
7386. Effect of giving or refusing to give security.
7387. Person committed for not giving security, how discharged.
SECTION
7388. Undertaking to be filed in Clerk's office.
7389. Security, when required for assault committed in the presence of a court or magistrate.
7390. Undertaking, when broken.
7391. Undertaking, when and how to be prosecuted.
7392. Evidence of breach.
7393. Security for the peace not required, except in accordance with this chapter.
7394. Force to preserve the peace at public meetings, when and how ordered.

SECTION 7380. An information may be laid before any magistrate, that a person has threatened to commit an offense against the person or property of another.

Information of threatened offense.
Cr. P., 19.

Examination of complainant and witness. Cr. P., 20.

Sec. 7381. When the information is laid before such magistrate he must examine on oath the informer, and any witness he may produce, and must take their depositions in writing, and cause them to be subscribed by the parties making them.

Warrant of arrest. Cr. P., 21.

Sec. 7382. If it appears from the depositions that there is just reason to fear the commission of the offense threatened, by the person so informed against, the magistrate must issue a warrant, directed generally to the Sheriff of the county, or any constable, marshal or policeman in the Territory, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate.

Proceedings on charges being controverted. Cr. P., 22.

Sec. 7383. When the person informed against is brought before the magistrate, if the charge be controverted the magistrate must take testimony in relation thereto. The evidence must be reduced to writing and subscribed by the witnesses.

Person complained of, when to be discharged. Cr. P., 23.

Sec. 7384. If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

Security to keep the peace. Cr. P., 24.

Sec. 7385. If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace towards the people of this Territory, and particularly towards the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

Effect of giving or refusing to give security. Cr. P., 25.

Sec. 7386. If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof and the omission to give the same.

Person not giving security, etc. Cr. P., 26.

Sec. 7387. If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate, upon giving the same.

Undertaking to be filed in clerk's office. Cr. P., 27.

Sec. 7388. The undertaking must be filed by the magistrate in the office of the Clerk of the District Court.

Security, when required for assault, etc. Cr. P., 28.

Sec. 7389. A person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offense against his person, or property, may be ordered by the court or magistrate to give security, as in this Chapter provided, and if he refuse to do so, may be committed.

Undertaking, when broken Cr. P., 29.

Sec. 7390. Upon the conviction of the person informed against, of a breach of the peace, the undertaking is broken.

Undertaking to be prosecuted, when and how. Cr. P., 30

Sec. 7391. Upon the District Attorney's producing evidence of such conviction to the District Court of the county the court must order the undertaking to be prosecuted, and the District Attorney must thereupon commence an action upon it in the name of the Territory of Idaho.

Evidence of breach. Cr. P., 31.

Sec. 7392. In the action the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

SEC. 7393. Security to keep the peace, or to be of good behavior, cannot be required except as prescribed in this chapter.

Security for the peace, etc.
Cr. P., 32.

SEC. 7394. The Mayor or other officer having the direction of the police of a city or town, must order a force sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

Force to preserve the peace.
Cr. P., 33.

CHAPTER IV.

SUPPRESSION OF RIOTS.

SECTION
7400. Power of Sheriff or other officer in overcoming resistence to process.
7401. The officer to certify to the court the names of the registers, etc.
7402. When Governor to order out a military force to aid in executing process.
7403. Magistrates and officers to command rioters to disperse.
SECTION
7404. To arrest rioters if they do not disperse.
7405. Armed force to obey orders of whom.
7406. Governor may declare a county in insurrection.
7407. Penalty for disobeying proclamation.
7408. May revoke the proclamation.

SECTION 7400. When a Sheriff or other public officer authorized to execute process finds, or has reason to apprehend that resistence will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting and confining the persons resisting, their aids and abettors.

Power of sheriff or other officer, etc.
Cr. P., 34.

SEC. 7401. The officer must certify to the court from which the process issued, the names of the persons resisting and their aids and abettors, to the end that they may be proceeded against for their contempt of court.

Officer to certify, etc.
Cr. P., 35.

SEC. 7402. If it appears to the Governor that the civil power of any county is not sufficient to enable the Sheriff to execute process delivered to him he must, upon the application of the Sheriff of the county, order such portion as shall be sufficient, or the whole, if necessary, of the militia of the Territory, to proceed to the assistance of the Sheriff.

When governor to call out militia.
Cr. P., 37.

SEC. 7403. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the Sheriff of the county and his deputies, the officials governing the town or city, or the Justices of the Peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them in the name of the people of the Territory, immediately to disperse.

Officers, etc., to command rioters to disperse.
Cr. P., 38.

SEC. 7404. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

To arrest rioters.
Cr. P., 39, 42.

SEC. 7405. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, it must obey the orders in relation thereto of such civil officer.

Armed force to obey orders.
Cr. P., 43.

SEC. 7406. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exists in any county,

Governor may proclaim insurrection.
Cr. P., 46.

and that the power of the county has exerted and has not been sufficient to enable the officer having the process, to execute it, he may, on the application of the officer, or of the district attorney, or Probate Judge of the county, by proclamation to be published in such papers as he shall direct, declare the county to be in a state of insurrection; and may order into the service of the Territory such number and description of volunteer or uniform companies, or other militia of the Territory, as he shall deem necessary to serve for such term, and under the command of such officer or officers as he shall direct.

Penalty for disobeying proclamation. Cr. P., 48.

SEC. 7407. Any person who after the publication of such proclamation, resists or aids in resisting the execution of process in any county so declared to be in a state of insurrection, or who aids or attempts the rescue or escape of any person from lawful custody or confinement, or who resists or aids in resisting any force ordered out by the Governor to quell or suppress an insurrection, shall be punished by imprisonment in the Territorial prison for a term not less than two years.

May revoke proclamation. Cr. P., 47.

SEC. 7408. The Governor may when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease at the time and in the manner directed by him.

TITLE II.

PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS.

CHAPTER I.

OF IMPEACHMENTS.

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7425. Officers liable to impeachment.
7426. Articles, how prepared. Trial by Council.
7427. Articles of impeachment.
7428. Time of hearing. Service on defendant.
7429. Service, how made.
7430. Proceedings on failure to appear.
7431. Defendant, after appearance, may answer or demur.
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7434. Two-thirds necessary to a conviction.
7435. Judgment on conviction; how pronounced.
7436. The same.
7437. Nature of the judgment.
7438. Effect of judgment of suspension.
7439. Officer, when impeached, disqualified until acquitted. Governor to temporarily fill vacancy.
7440. Impeachment not a bar to indictment.

SECTION 7425. Any Territorial officer, created by Territorial law, shall be liable to impeachment for any misdemeanor.

Officers subject to impeachment. Cr. P., 49.

SEC. 7426. All impeachments must be by resolution adopted and originated in the House of Representatives, and conducted by managers elected by the House, who must prepare articles of impeachment, present them at the bar of the Council, and prosecute the same. The trial must be had before the Council, sitting as a court of impeachment.

Articles, how prepared, by whom tried. Cr. P., 50.

SEC. 7427. When an officer is impeached by the House of Representatives for a misdemeanor in office, the articles of impeachment must be delivered to the President of the Council.

Articles of impeachment. Cr. P., 51.

SEC. 7428. The Council must assign a day for the hearing of the impeachment and inform the House of Representatives thereof. The President of the Council must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing.

Time of hearing. Cr. P., 52.

Service on defendant.

SEC. 7429. The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the Territory, the Council, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place, and answer the articles of impeachment.

Service, how made. Cr. P., 53.

SEC. 7430. If the defendant does not appear, the council, upon proof of service or publication, as provided in the two last sections, may of its own motion, or for cause shown, assign another day for hearing the impeachment, or may proceed, in the absence of the defendant, to trial and judgment.

Proceedings on failure to appear. Cr. P., 54.

SEC. 7431. When the defendant appears he may in writing, object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty, which plea must be entered upon the journal, and puts in issue and every material allegation of the articles of impeachment.

Defendant may answer or demur, when. Cr. P., 55, 56.

If demurrer is overruled defendant must answer. Cr. P., 57.

SEC. 7432. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the council who heard the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, or refuses to plead, the council must render judgment of conviction against him. If he pleads not guilty, the council must at such time as it may appoint, proceed to try the impeachment.

Council to be sworn. Cr. P., 58.

SEC. 7433. At the time and place appointed and before the council proceeds to act on the impeachment, the secretary must administer to the president of the council, and the president of the council to each of the members of the council then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the council can act or vote upon the impeachment or upon any question arising thereon without having taken such oath.

Conviction, two-thirds necessary. Cr. P., 60

SEC. 7434. The defendant cannot be convicted on an impeachment without the concurrence of two-thirds of the members present, voting by ayes and noes, and if two-thirds of the members present do not concur in a conviction, he must be acquitted.

Judgment on conviction, how pronounced. Cr. P., 61.

SEC. 7435. After conviction the council must, at such time as it may appoint, pronounce judgment in the form of a resolution, entered upon the journals of the council.

Same. Cr. P., 62.

SEC. 7436. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the council.

Judgment, nature of. Cr. P., 63.

SEC. 7437. The judgment may be that the defendant be suspended and removed from office, or that he be removed from office and disqualified to hold and enjoy a particular office, or class of offices, or any office in this Territory.

Effect of judgment of suspension. Cr. P., 64.

SEC. 7438. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

Officer, when impeached, disqualified, etc. Cr. P., 65.

Governor to fill vacancy.

SEC. 7439. Whenever articles of impeachment against any officer subject to impeachment are presented to the council, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any Territorial officer, his office must at once be temporarily filled by an appointment made by the Governor, with the advice and consent of the council, until the acquittal of the party impeached; or, in case of his removal, until the vacancy is filled as required by law.

Impeachment not a bar to indictment. Cr. P., 66.

SEC. 7440. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment, the indictment is not barred thereby.

CHAPTER II.

OF THE REMOVAL OF CIVIL OFFICERS.

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7445. Accusation to be presented by the Grand Jury.
7446. Form of accusati n.
7447. To be transmitted to the District Attorney, and copy served on the defendant.
7448. Proceedings if defendant does not appear.
7449. Defendant may object to or deny the accusation.
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7453. Proceedings upon plea of guilty, refusal to answer, or denial.
7454. Trial by jury.
7455. Territory and defendant entitled to process for witnesses.
7456. Judgment upon conviction, and its form.
7457. Appeal, how taken. Pending appeal, defendant to be suspended and vacancy filled.
7458. Proceedings for the removal of a District Attorney.
7459. Removal of public officers by summary proceedings before District Courts.

SECTION 7445. An accusation in writing against any district, county, precinct, or municipal officer, for willful or corrupt misconduct in office, may be presented by the Grand Jury of the county for or in which the officer accused is elected or appointed.

Accusation to be presented by grand jury. Cr. P , 67.

SEC. 7446. The accusation must state the offense charged, in ordinary and concise language, and without repetition.

Accusation, form of. Cr. P., 68.

SEC. 7447. The accusation must be delivered by the foreman of the Grand Jury to the District Attorney of the county, except when he is the officer accused, who must cause a copy thereof, to be served upon the defendant, and require by notice in writing, of not less than ten days, that he appear before the District Court of the county, then sitting or at its next term, and answer the accusation. The original accusation must then be filed with the Clerk of the District Court.

To be transmitted to District Attorney, copy served on defendant. Cr. P., 69.

SEC. 7448. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

Proceedings if defendant does not appear. Cr. P.,70

SEC. 7449. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

Defendant may object to or deny the accusation Cr. P., 71.

SEC. 7450. If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection.

Objection, form of. Cr. P., 72.

SEC. 7451. If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

Denial, manner of. Cr. P., 73.

SEC. 7452. If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith.

Objections overruled. Cr. P., 74.

SEC. 7453. If the defendant pleads guilty, or refuses to answer the accusation, the court must render judgment of conviction against him. If he denies the matters charged, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

Proceedings upon plea of guilty. Cr. P., 75.

SEC. 7454. The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

Trial by jury. Cr. P., 76.

Territory and defendant entitled to process. Cr. P., 77.

SEC. 7455. The district attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses as upon a trial of an indictment.

Judgment upon conviction, and its form. Cr. P., 78.

SEC. 7456. Upon a conviction, the court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, and the causes of removal must be assigned therein.

Appeal, how taken. Cr. P. 79.

Pending appeal, defendant suspended. Cr. P., 79.

SEC. 7457. From a judgment of removal an appeal may be taken to the Supreme Court, in the same manner as from a judgment in a civil action; but until such judgment is reversed the defendant is suspended from his office. Pending the appeal, the office must be filled as in case of a vacancy.

Proceedings for removal of a district attorney. Cr. P., 80.

SEC. 7458. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by him to the District Judge of the district, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings.

Removal of public officers by summary proceedings. N. S.

SEC. 7459. When an information in writing verified by the oath of any person, is presented to a District Court, alleging that any officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered or to be rendered in his office, or has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court at a time not more than ten nor less than five days from the time the information was presented, and on that day or some other subsequent day, not more than twenty days from that on which the information was presented, must proceed to hear, in a summary manner, the information and evidence offered in support of the same, and the answer and evidence offered by the party informed against; and if on such hearing it appears that the charge is sustained, the court must enter a decree that the party informed against be deprived of his office, and must enter a judgment for five hundred dollars in favor of the informer and such costs as are allowed in civil cases.

TITLE III.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS, PROSECUTED BY INDICTMENT, TO THE COMMITMENT, INCLUSIVE.

CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

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7480. Jurisdiction of offenses committed in this Territory.
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7482. When an inhabitant of this Territory is concerned in a duel, out of the same, and a party wounded dies therein.
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7489. Jurisdiction of an indictment for escaping from prison.
7490. Jurisdiction of an indictment for stealing, etc., property out of this Territory and bringing it therein.
7491. Jurisdiction of an indictment for murder, etc., where the injury was inflicted in one county and the party dies out of that county.
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7493. Jurisdiction in cases of principals who are not present, etc., at commission of principal offense.
7494. Conviction or acquittal in another Territory a bar, where the jurisdiction is concurrent.
7495. Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.

SECTION 7480. Every person is liable to punishment by the laws of this Territory, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

Jurisdiction of offenses committed in this Territory. Cr. P., 81.

SEC. 7481. When the commission of a public offense, commenced without the Territory, is consummated within its boundaries, the defendant is liable to punishment therefor in this Territory, though he was out of the Territory at the time of the commission of the offense charged. If he consummated it in this Territory through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offense is consummated.

When offense commenced without the Territory, etc. Cr. P., 82.

SEC. 7482. When an inhabitant or resident of this Territory, by previous appointment or engagement, fights a duel or is concerned as second therein, out of the jurisdiction of this Territory; and in the duel a wound is inflicted upon a person, whereof he dies in this Territory, the jurisdiction of the offense is in the county where the death happens.

When person concerned in a duel, etc. Cr. P., 83.

SEC. 7483. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

Offense committed in different counties. Cr. P., 84.

SEC. 7484. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

When committed on boundary of two or more counties. Cr. P., 85.

Jurisdiction of an offense on board a vessel. Cr. P., 86.

SEC. 7485. When an offense is committed in this Territory, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates; and when the offense is committed in this Territory, on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates.

Railroad train.

Indictment for kidnapping, abduction, etc. Cr. P., 87.

SEC. 7486. The jurisdiction of a criminal action:

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him with intent, against his will, to cause him to be secretly confined or imprisoned in this Territory, or to be sent out of the Territory, or from one county to another, or to be sold as a slave, or in any way held to service; or,

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child; or,

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution; or,

4. For taking away any female under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution; is in the county in which the offense is committed, or out of which the person upon whom the offense was committed may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein.

Bigamy or incest. Cr. P., 88.

SEC. 7487. When the offense either of bigamy or incest, is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

Property taken from one county into another. Cr. P., 89.

SEC. 7488. When property taken in one county by burglarly, robbery, larceny, or embezzlement, has been brought into another the jurisdiction of the offense is in either county. But if at any time before the conviction of the defendant in the latter, he is indicted in the former county, the Sheriff of the latter county must, upon demand, deliver him to the Sheriff of the former.

Indictment for escaping from prison. N. S.

SEC. 7489. The jurisdiction of a criminal action for escaping from prison, is in any county of the Territory.

Jurisdiction of indictment for stealing, etc. N. S.

SEC. 7490. The jurisdiction of a criminal action for stealing in any other Territory the property of another or receiving it, knowing it to have been stolen, and bringing the same into this Territory is in any county into or through which such stolen property has been brought.

Jurisdiction of indictment for murder, etc. Cr., 24.

SEC. 7491. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county and the party injured dies in another county or out of the Territory, is in the county where the injury was inflicted.

Of an indictment against an accessory. Cr. P., 90.

SEC. 7492. In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

SEC. 7493. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same county it would be under this Code if he were so present and aiding and abetting therein.

Jurisdiction in cases of principals who are not present, etc. N. S.

SEC. 7494. When an act charged as a public offense, is within the jurisdiction of another Territory, State, or country, as well as of this Territory, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this Territory.

Conviction or acquittal in another Territory. Cr. P., 91.

SEC. 7495. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

Conviction, etc. in another county. Cr. P., 92.

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

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7500. Prosecution for murder may be commenced at any time.
7501. Limitation of three years in all other felonies.
7502. Limitation of one year in misdemeanors.
SECTION
7503. Exception when defendant is out of the Territory.
7504. Indictment found, when presented and filed.

SECTION 7500. There is no limitation of time within which a prosecution for murder must be commenced. It may be commenced at any time after the death of the person killed.

Prosecution for murder may be commenced, when. Cr. P., 93.

SEC. 7501. An indictment for any other felony than murder must be found within three years after its commission.

Other felonies, limitation of time. Cr. P., 94.

SEC. 7502. An indictment for any misdemeanor must be found within one year after its commission.

Misdemeanors, time of. Cr. P., 95.

SEC. 7503. If, when the offense is committed, the defendant is out of the Territory, the indictment may be found within the terms herein limited after his coming within the Territory and no time during which the defendant is not an inhabitant of, or usually resident within the Territory, is part of the limitation.

Exception, when defendant out of Territory. Cr. P., 96.

SEC. 7504. An indictment is found, within the meaning of this chapter, when it is presented by the grand jury in open court, and there received and filed.

Indictment, when presented and filed. Cr. P., 97.

CHAPTER III.

THE INFORMATION.

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7509. Information defined.
7510. Magistrate defined.
SECTION
7511. Who are magistrates.

SECTION 7509. The complaint or information is the allegation in writing, made to a magistrate, that a person has been guilty of some designated offense.

Information defined. Cr. P., 99.

SEC. 7510. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

Magistrate defined. Cr. P., 100.

Who are magistrates. Cr. P., 101.

SEC. 7511. The following persons are magistrates:

1. The Justices of the Supreme Court;
2. The Probate Judges;
3. Justices of the Peace;
4. Police magistrates in towns or cities.

CHAPTER IV.

THE WARRANT OF ARREST.

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7516. Examination of the prosecutor and his witnesses upon the information.
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7518. When warrant may issue.
7519. Form of warrant.
7520. Name or description of the defendant in the warrant, and statement of the offense.
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7529. No delay in taking defendant before magistrate.
7530. Proceedings where defendant is taken before another magistrate.
7531. Proceedings for offenses triable in another county.
7532. Duty of officer.

Examination of prosecutor and witnesses. Cr. P., 102.

SECTION 7516. When an information is laid before a magistrate of the commission of a public offense, triable within the county, he must examine, on oath, the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Depositions, what to contain. Cr. P., 103.

SEC. 7517. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

When warrant may issue. Cr. P., 104.

SEC. 7518. If the magistrate is satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

Form of warrant. Cr. P., 105.

SEC. 7519. A warrant of arrest is an order in writing, in the name of the Territory of Idaho, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

County of———,

Territory of Idaho, to any sheriff, constable, marshal, or policeman of said Territory, or of the County of———: A complaint on oath, having this day been laid before me, by A. B., that the crime of (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or in the case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at———, this——day of———, eighteen———

Name and description of defendant in warrant, also offense. Cr. P., 106.

SEC. 7520. The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city, or town where it is issued and be signed by the magistrate, with his name of office, and state the offense charged.

Warrant. Cr. P., 107.

SEC. 7521. The warrant must be directed to and executed by a peace officer.

SEC. 7522. A peace officer is a sheriff of a county, or a constable, marshal, or policeman of a city, or town.

Who are peace officers. Cr. P., 108.

SEC. 7523. If a warrant is issued by a Justice of the Supreme Court, or Probate Judge, it may be directed generally to any sheriff, constable, marshal, or policeman in the Territory, and may be executed by any of those officers to whom it may be delivered.

Warrants, to whom directed. Cr. P., 109.

SEC. 7524. If it be issued by any other magistrate it may be directed generally to any sheriff, constable, marshal, or policeman, in the county in which it is issued, and may be executed by any sheriff to whom it is directed in any county of this Territory: and when the sheriff of any county is paid by salary instead of fees, he shall receive twenty cents per mile for each mile necessarily traveled outside his county.

When and how executed in another county. Act Jan. 31, 1883.

SEC. 7525. If the offense charged is one which must afterwards be investigated by the Grand Jury, the officer making the arrest, must take the defendant before the magistrate who issued the warrant, but if such magistrate does not reside in the precinct where the offense was committed or the majority of the witnesses reside, the officer having the charge of the defendant must take him and the warrant, deposition, and all papers in the case before some magistrate in such precinct for hearing and examination, or if there be no magistrate in such precinct, then before some magistrate residing in some other precinct, but all hearings on preliminary examinations, must as far as possible, be had before the magistrate most convenient to the majority of witnesses for the prosecution, unless for good cause it is ordered to be held elsewhere, and in all such cases the preliminary examinations must be had as hereinafter provided, and in no case, which will come before the Grand Jury for investigations can such examination be waived, avoided or unreasonably delayed by either the defendant or the people, and for taking such examinations the magistrate must be allowed thirty cents per folio.

Defendant to be taken before magistrate.

SEC. 7529. The defendant must in all cases be taken before the magistrate without unnecessary delay, and any attorney at law entitled to practice in courts of record of Idaho Territory, may, at the request of the prisoner after such arrest, visit the person so arrested.

No delay in taking defendant before magistrate. Cr. P., 116.

SEC. 7530. If the defendant is brought before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

Proceedings where defendant is taken before another magistrate. Cr. P., 117.

SEC. 7531. When an information is laid before a magistrate of the commission of a public offense, triable in another county of the Territory, but showing that the defendant is in the county where the complaint is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the magistrate most accessible to the witnesses for the prosecution, but in the county in which the offense is triable and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

Proceedings for offenses triable in another county.

Officer, duty of.

SEC. 7532. The officer who executes the warrant must take the defendant before the magistrate most accessible to the witnesses for the prosecution, but in the county in which the offense is triable, and must deliver to him the depositions and the warrant, with his return endorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

CHAPTER V.

ARREST. BY WHOM AND HOW MADE.

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7538. Arrest defined. By whom made.
7539. How an arrest is made and what restraint allowed.
7540. Arrests by peace officers.
7541. Arrests by private persons.
7542. Magistrates may order arrest.
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7550. Weapons may be taken from persons arrested.
7551. Duty of a private person who has made an arrest.
7552. Persons arrested without a warrant to be taken before a magistrate. Information to be filed.
7553. Arrest by telegraph.
7554. Same.

Arrest defined, by whom made. Cr. P., 121, 122.

SECTION 7538. An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

Arrest, how made. Cr. P., 125, 126.

SEC. 7539. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

Arrests by peace officers. Cr. P., 131. Cr. P., 133.

SEC. 7540. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence;
2. When a person arrested has committed a felony, although not in his presence;
3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it;
4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested;
5. At night, when there is reasonable cause to believe that he has committed a felony.

Arrests by private persons. Cr. P., 137.

SEC. 7541. A private person may arrest another:

1. For a public offense committed or attempted in his presence;
2. When the person arrested has committed a felony, although not in his presence;
3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Magistrate may order arrest. Cr. P., 136.

SEC. 7542. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

May summon assistance. Cr. P., 123.

SEC. 7543. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

SEC. 7544. If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant. When arrest may be made. Cr. P., 124.

SEC. 7545. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape. Arrest, how made. Cr. P., 134, 138.

SEC. 7546. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required. Warrant must be shown. Cr. P., 127.

SEC. 7547. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest. What force may be used.

SEC. 7548. To make an arrest, if the offense is a felony, a private person, if any public offense, a peace officer, may break open the door or window in which the person to be arrested is, or in which there is reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired. Doors and windows may be broken, when. Cr. P., 129, 132, 139.

SEC. 7549. Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein. Doors and windows may be broken. Cr. P., 130.

SEC. 7550. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken. Weapons to be taken. N. S.

SEC. 7551. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer. Duty of private person who makes arrest. Cr. P., 140.

SEC. 7552. When an arrest is made without a warrant by a peace officer or private person, the person arrested must without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate. Person arrested without warrant. Cr. P., 140.

SEC. 7553. A Justice of the Supreme Court or Probate Judge may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers, and such copy is as effectual in the hands of an officer; and he must proceed in the same manner under it as though he held an original warrant issued by the magistrate making the indorsement. Arrested by telegraph. N. S.

SEC. 7554. Every officer causing telegraphic copies of warrants to be sent must certify as correct, and file in the telegraph office from which such copies are sent, a copy of Arrest by telegraph. N. S.

the warrant and indorsement thereon, and must return the original with a statement of his action thereunder.

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

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7559. May be at any time or in any place in the Territory.
SECTION
7560. May break open door or window if admittance refused.

Time or place in Territory. escape. Cr. P., 141.

SECTION 7559. If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the Territory.

May break open door or window. Cr. P., 142.

SEC. 7560. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling house, if, after notice of his intention, he is refused admittance.

CHAPTER VII.

THE EXAMINATION.

SECTION
7565. Magistrate to inform the defendant of the charge, and his right to counsel.
7566. Time to send and sending for counsel.
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Defendant's right to counsel, etc. Cr. P., 143.

SECTION 7565. When the defendant is brought before the magistrate on an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings.

Sending for counsel. Cr. P., 144.

SEC. 7566. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose, and must, upon the request of the defendant, require a peace officer to take a message to any counsel in the township or city, the defendant may name. The officer must, without delay and without fee, perform that duty.

Examination, when to proceed. Cr. P., 145.

SEC. 7567. If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case.

When to be completed. Cr. P., 146.

SEC. 7568. The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

Postponement.

SEC. 7569. If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this Code, as security for his appearance at the time to which the examination is postponed.

Defendant to be commited, when. Cr. P., 147.

SEC. 7570. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect:

Commitment, form of. Cr. P., 148.

"The within named A. B. having been brought before me under this warrant, is committed for examination to the sheriff of ————." If the sheriff is not present, the defendant may be committed to the custody of a peace officer.

SEC. 7571. At the examination, the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpœnas, subscribed by him, for witnesses within the Territory, required either by the prosecution or the defense.

Depositions to be read on examination. Cr. P., 149.

SEC. 7572. The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

Examination of witnesses. Cr. P., 150.

SEC. 7573. When the examination of witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined.

Defendant's witnesses. Cr. P., 156.

SEC. 7574. While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

Exclusion of witnesses. Cr. P., 157.

SEC. 7575. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecution and his counsel, the Attorney General, the District Attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

Who may be present at examination.

SEC. 7576. In all cases which must afterwards be investigated by the grand jury, the examination must be taken, and cannot be waived or unreasonably delayed by either party and the testimony must be reduced to writing, as a deposition, by the magistrate, or under his direction, and authenticated in the following form:

Testimony, how taken and authenticated. N. S.

1. It must state the name of the witness, his place of residence, and his business or profession;
2. It must contain the questions put to the witness and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth;
3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated;
4. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it.
5. It must be signed and certified by the magistrate.

SEC. 7577. The magistrate must keep the depositions taken on the information or on the examination, until they

Depositions, by whom and how kept. N. S.

are returned to the proper court; and must not permit them to be examined or copied by any person except a Judge of a Court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the Attorney General, District Attorney, or other prosecuting attorney, and the defendant and his counsel.

Defendant, when and how discharged. Cr. P., 151.,

SEC. 7578. If, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must order the defendant to be discharged, by an indorsement on the deposition signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

When and how to be committed. Cr. P., 160.

SEC. 7579. If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must endorse on the depositions an order, signed by him, to the following effect: "It appearing to me that the offense in the within depositions mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe that the within named A. B. guilty thereof, I order that he be held to answer the same."

Order for commitment. Cr. P., 161.

SEC. 7580. If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the sheriff of the county of———."

Order for bail on commitment. Cr. P., 163.

SEC. 7581. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to the order endorsed on the deposition: "And that he is admitted to bail in the sum of————dollars, and is committed to the sheriff of the county of————, until he gives such bail."

Commitment, how made and to whom delivered. Cr. P., 164.

SEC. 7582. If the magistrate order the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

Commitment, form of. Cr. P., 165.

SEC. 7583. The commitment must be to the following effect: "County of——(as the case may be). The Territory of Idaho to the sheriff of the county of————:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when, and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this——day of————, eighteen————.

Undertaking of witnesses to appear, etc. Cr. P., 166.

SEC. 7584. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

Security for appearance of witnesses. Cr. P., 167.

SEC. 7585. When the magistrate or a Judge of the Court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

Infants, etc., to give security. Cr. P., 168.

SEC. 7586. Infants and married women, who are material witnesses against the defendant, may be required to procure sureties for their appearance, as provided in the last section.

Witness to be committed, when.

SEC. 7587. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

Witness unable to give security may be conditionally examined. Cr. P., 170.

SEC. 7588. When, however, it satisfactorily appears by examination on oath of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this Chapter to be conducted, and the witness thereupon be discharged; but this section does not apply to an accomplice in the commission of the offense charged.

Magistrates to return depositions, etc., to court. Cr. P., 172.

SEC. 7589. When a magistrate has discharged a defendant or has held him to answer, he must return, without delay, to the Clerk of the Court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail or for the appearance of witnesses taken by him.

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

CHAPTER I.

PRELIMINARY PROVISIONS.

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7600. What prosecutions must be by indictment.
7601. What by accusation or information.
SECTION
7602. Indictments and accusations, in what court found.

Prosecutions by indictment.
Cr. P., 173.

SECTION 7600. All public offenses triable in the District Court, must be prosecuted by indictment, except as provided in the next section.

By accusation or information.
Cr. P., 174.

SEC. 7601. When the proceedings are had for the removal of district, county, municipal, or precinct officers, they may be commenced by an accusation or information, in writing, as provided in Chapter II of Title II of this part.

Indictments and accusations, where found.
Cr. P., 165.

SEC. 7202. All accusations against district, county, municipal and precinct officers, and all indictments, must be found in the District Court.

CHAPTER II.

FORMATION OF THE GRAND JURY.

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7607. Who may challenge the panel or an individual juror.
7608. Cause of challenge to a panel.
7609. Cause of challenge to an individual grand juror.
7610. Manner of taking and trying challenges.
7611. Decision upon challenges.
7612. Effect of allowing a challenge to a panel.
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7616. Appointment of a foreman.
7617. Oath of foreman.
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7620. Retirement of the grand jury. Discharge of.
7621. Special grand jury.
7622. Order for special grand jury.
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Who may challenge.
Cr. P., 177.

SECTION 7607. The people, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual juror.

Cause of challenge to panel.
Cr. P., 178.

SEC. 7608. A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury box of the county;

2. That notice of the drawing of the grand jury was not given;

3. That the drawing was not had in the presence of the officers designated by law.

Cause of challenge to an individual grand juror.
Cr. P., 179.

SEC. 7609. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

1. That he is a minor;
2. That he is an alien;
3. That he is insane;

Act Jan. 10, 1883.

4. That he is prosecutor upon a charge against the defendant;

5. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such;

6. That he has formed or expressed an unqualified opinion or belief that the defendant is guilty or not guilty of the offense charged; but a hypothetical opinion, founded on hearsay or information supposed to be true, unaccompanied with malice or ill will, shall not disqualify a grand juror or be a cause of challenge;

7. That a state of mind exists on his part in reference to the case, or to either party, which satisfies the court that he cannot act impartially and without prejudice to the substantial rights of the party challenged.

Manner of challenging. Cr. P., 180.

SEC. 7610. The challenges mentioned in the last three sections may be oral, or in writing, and must be tried by the court.

Decision upon challenges. Cr. P. 181.

SEC. 7611. The court must allow or disallow the challenge, and the clerk must enter its decisions upon the minutes.

Effect of allowing a challenge to a panel. Cr. P., 182.

SEC. 7612. If a challenge to the panel is allowed, the grand jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the court must direct it to be set aside.

Allowing challenge to an individual juror, effect of. Cr. P., 183, 184.

SEC. 7613. If a challenge to an individual grand juror is allowed, he cannot be present or take part in the consideration of the charge as to which he was challenged against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. The grand jury must inform the court of a violation of this section, and it is punishable by the court as a contempt.

Manner of filling panel. N. S.

SEC. 7614. If more than three challenges to individual grand jurors are allowed to the same defendant in reference to the same charge, the court must fill the panel to sixteen as to that charge by causing a sufficient number of competent jurors from those summoned and not before called, or if a sufficient number are not in attendance, then from the bystanders or from the body of the county to be sworn to act as jurors with the regular panel, upon the examination of that charge; and, if necessary to secure the full number of sixteen competent jurors, the court may require the Sheriff to summon the required number.

Objections, how taken. Cr. P., 185.

SEC. 7615. A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to any individual grand juror in no other mode than by challenge.

Appointment of a foreman. Cr. P., 186.

SEC. 7616. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman when the person already appointed is excused, or discharged before the grand jury is dismissed.

Oath of foreman. Cr. P., 187.

SEC. 7617. The following oath must be administered to the foreman of the grand jury:

"You, as foreman of the grand jury, will diligently inquire into and true presentment make, of all public offenses against the Territory of Idaho, committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You will present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God."

Oath of other jurors. Cr. P., 188.

SEC. 7618. The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God."

Charge of court. Cr. P., 189.

SEC. 7619. The grand jury being impaneled and sworn, must be charged by the court. In doing so, the Court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

Retirement of grand jury. Cr. P., 190, 191.

SEC. 7620. The grand jury must then retire to a private room and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the court, but, whether the business is completed or not, they are discharged by the final adjournment of the court.

Special grand jury. Cr. P., 192.

SEC. 7621. If an offense is committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

Order for special jury. Cr. P., 193.

SEC. 7622. The order must require the sheriff to summon twenty persons, qualified to serve as grand jurors, to appear at a time specified, and a copy thereof, under the seal of the court, must, by the clerk, be delivered to the sheriff.

Order, how executed Cr. P., 144.

SEC. 7623. The Sheriff must execute the order and return it, with a list of names of the persons summoned.

Special jury, how formed. Cr. P., 195.

SEC. 7624. At the time appointed the list must be called over, and the names of those in attendance be written by the Clerk on separate ballots and put into a box, from which a Grand Jury must be drawn.

CHAPTER III.

POWERS AND DUTIES OF A GRAND JURY.

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7632. Indictment defined.
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7636. Degree of evidence to warrant indictment.
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7638. Must inquire into cases of persons imprisoned, etc.
7639. Entitled to access to public prison, etc.
7640. When and from whom they may ask advice, and who may be present during their sessions.
7641. Secrets of Grand Jury to be kept, except, etc.
7642. Grand Juror not to be questioned for his conduct, except, etc.

SECTION 7630. The Grand Jury must inquire into all public offenses committed or triable within the county, and present them to the court, either by presentment or by indictment.

Grand jury powers of. Cr. P., 201.

SEC. 7631. A presentment is a formal statement in writing, by the Grand Jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it.

Presentment defined. Cr. P., 203.

SEC. 7632. An indictment is an accusation in writing, presented by the Grand Jury to a competent court, charging a person with a public offense.

Indictment defined. Cr. P., 202.

SEC. 7633. The foreman may administer an oath to any witness appearing before the Grand Jury.

Foreman may administer oaths. Cr. P., 204.

SEC. 7634. In the investigation of a charge for the purpose of either presentment or indictment, the Grand Jury can receive no other evidence than such as is given by witnesses produced and sworn before them except as hereinafter provided, or furnished by legal documentary evidence, or the deposition of a witness in the cases provided by this Code. The Grand Jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence, but no witness whose testimony has been taken and reduced to writing on a preliminary examination must be subpœnaed or required to appear before the Grand Jury, until such testimony has been first submitted to and considered by the Grand Jury, but if such testimony has been lost or cannot be found, or if the Grand Jury after considering the same still desires the presence of any such witnesses, they may be subpœnaed.

Evidence receivable before grand jury.

SEC. 7635. The Grand Jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the District Attorney to issue process for the witnesses.

Grand jury not bound to hear evidence for defendant. Cr. P., 207.

SEC. 7636. The Grand Jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

Evidence to warrant indictment. Cr. P., 208.

Juror's knowledge of public offense.
Cr. P., 209.

SEC. 7637. If a member of a Grand Jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who must thereupon investigate the same.

Persons imprisoned, etc.
Cr. P., 210.

SEC. 7638. The Grand Jury must inquire into the case of every person imprisoned in the jail of the county, on a criminal charge and not indicted; into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description, within the county.

Access to prisons, etc.
Cr. P., 211.

SEC. 7639. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

Who may be present at sessions of jury, etc.
Cr. P., 212.

SEC. 7640. The Grand Jury may, at all reasonable times, ask the advice of the court, or the judge thereof, or of the District Attorney: but unless such advice is asked, the judge of the court must not be present during the sessions of the Grand Jury. The District Attorney of the county may at all times appear before the Grand Jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever they or he thinks it necessary; but no other person is permitted to be present during the sessions of the Grand Jury, except the members and witnesses actually under examination, and an interpreter when necessary, and no person must be permitted to be present during the expressions of their opinions, or giving their votes upon any matter before them.

Secrets of jury to be kept, etc.
Cr. P., 213, 214.

SEC. 7641. Every member of the Grand Jury must keep secret whatever he himself, or any other Grand Juror may have said, or in what manner he or any other Grand Juror may have voted on a matter before them; but may, however, be required by any court to disclose the testimony of a witness examined before the Grand Jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony, or upon trial therefor.

Juror not to be questioned.
C.. P., 215.

SEC. 7642. A Grand Juror cannot be questioned for anything he may say, or any vote he may give in the Grand Jury relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

CHAPTER IV.

PRESENTMENT AND PROCEEDINGS THEREON.

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7648. Must be presented to the court and filed.
7649. If the facts stated in the presentment constitute a public offense, the court must direct a bench warrant.

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7650. Bench warrant, by whom, and how issued.
7651. Form of bench warrant.
7652. Bench warrant how served.
7653. Proceedings of magistrate on defendant being brought before him.

Presentment must be made by twelve jurors.
Cr. P., 216.

SECTION 7647. A presentment cannot be found without the concurrence of at least twelve Grand Jurors. When so found, it must be signed by the foreman.

SEC. 7648. The presentment, when found, must be presented by the foreman, in presence of the Grand Jury, to the court, and must be filed with the Clerk.

Must be presented to the court.
Cr. P., 217.

SEC. 7649. If the facts stated in the presentment constitute a public offense, triable in the county, the court must direct the Clerk to issue a bench warrant for the arrest of the defendant.

When court issue bench warrant.
Cr. P., 220.

SEC. 7650. The Clerk, on the application of the Judge or District Attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant under his signature and the seal of the court into one or more counties.

Bench warrant, by whom issued.
Cr. P., 221.

SEC. 7651. The bench warrant, upon presentment, must be substantially in the following form:

Form of bench warrant.
Cr. P., 222.

County of ———. The Territory of Idaho to any Sheriff, Constable, Marshal, or Policeman in this Territory: A presentment having been made on the ——— day of ———, eighteen ———, to the District Court of the county of ———, charging C. D. with the crime of ———, (designating it generally,) you are therefore commanded forthwith to arrest the above named C. D., and take him before E. F., a magistrate of this county, or in case of his absence or inability to act, before the nearest and most accessible magistrate in this county. Given under my hand with the seal of said court affixed, this ——— day of ———, A. D. eighteen ———.

By order of the court.

[Seal.] G. H., Clerk.

SEC. 7652. The bench warrant may be served in any county, and the officer serving it must proceed thereon as upon a warrant of arrest on an information.

Bench warrant, how served.
Cr. P., 223.

SEC. 7653. The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on an information.

Proceedings of magistrate.
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TITLE V.

OF THE INDICTMENT.

CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

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SECTION
7668. Names of witnesses inserted at foot of indictment.
7669. Indictment, how presented and filed.
7670. Proceedings when defendant is not in custody.

Indictment, jurors necessary to find.
Cr. P., 225.

SECTION 7665. An indictment cannot be found without the concurrence of at least twelve Grand Jurors. When so found it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the Grand Jury.

Depositions must be returned, when.
Cr. P., 226.

SEC. 7666. If twelve Grand Jurors do not concur in finding an indictment against a defendant who has been held to answer, the depositions, if any, transmitted to them must be returned to the court, with an indorsement thereon, signed by the foreman, to the effect that the charged is dismissed.

Dismissal, effect of.
Cr. P., 227.

SEC. 7667. The dismissal of the charge does not prevent its resubmission to a Grand Jury as often as the court may direct, but without such direction it cannot be resubmitted.

Witnesses, names of.
Cr. P., 228.

SEC. 7668. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

Indictment, how presented.
Cr. P., 229.

SEC. 7669. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

Defendant not in custody.
Cr. P., 230.

SEC. 7670. When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed by chapter I of Title VI, against a defendant who fails to appear for arraignment.

CHAPTER II.

PLEADINGS. INDICTMENT.

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7692. Pleading in indictment for forgery, where instrument has been destroyed or withheld by defendant.
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7695. Pleading in an indictment for selling, exhibiting, etc., lewd and obscene books, etc.
7696. Indictment against several, one or more may be acquitted.
7697. Distinction between accessory before the fact and principal abrogated. Principals, how indicted, etc.
7698. Accessory may be indicted and tried, though principal has not been.

SECTION 7675. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this Code.

Rules of pleading. Cr. P., 231.

SEC. 7676. The first pleading on the part of the people is the indictment.

Pleading by the people. Cr. P., 232.

SEC. 7677. The indictment must contain:

Indictment, what must contain. Cr. P., 233.

1. The title of the action specifying the name of the court to which the indictment is presented, and the names of the parties;

2. A statement of the acts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

SEC. 7678. It may be substantially in the following form:

Form of indictment. Cr. P., 234.

The Territory of Idaho against A. B., in the District Court of the————Judicial District, in the county of—————————Term, A. D., eighteen——:

A. B. is accused by the grand jury of the county of——— by this indictment, of the crime of (giving its legal appellation, such as murder, arson, or the like), committed as follows:

The said A. B., on the——day of————, A. D. eighteen———, at the county of————, (here set forth the act or omission charged as an offense).

SEC. 7679. It must be direct and certain as it regards:

Indictment, must be certain. Cr. P., 235.

1. The party charged;
2. The offense charged;
3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

SEC. 7680. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered it must be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Defendant indicted by fictitious name. Cr. P., 236.

Indictment must charge but one offense. Cr. P., 237.

SEC. 7681. The indictment must charge but one offense, but the same offense may be set forth in different forms under different counts, and, when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

When offense was committed. Cr. P., 238.

SEC. 7682. The precise time at which the offense was committed need not be stated in the indictment; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

Person injured. Cr. P., 239.

SEC. 7683. When an offense involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

Construction of words. Cr. P., 240.

SEC. 7684. The words used in an indictment are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning.

Words of statute not to be strictly pursued. Cr. P., 241.

SEC. 7685. Words used in a statute to define a public offense need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

Indictment, when sufficient. Cr. P., 242.

SEC. 7686. The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated;
2. That it was found by a Grand Jury of the county in which the court was held;
3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury unknown;
4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein;
5. That the offense was committed at some time prior to the time of finding the indictment;
6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.
7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

Indictment, defect of form. Cr. P., 243.

SEC. 7687. No indictment is insufficient, nor can the trial, judgment, or other proceeding thereon, be affected by reason of any defect or imperfection in matter of form, which does not tend to the prejudice of a substantial right of the defendant upon its merits.

Presumptions of law, etc. Cr. P., 244.

SEC. 7688. Neither presumptions of law nor matters of which judicial notice is taken, need be stated in an indictment.

Judgment, etc., how pleaded. Cr. P., 245.

SEC. 7689. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

SEC. 7690. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Private statutes, how pleaded. Cr. P., 246.

SEC. 7691. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

Indictment for libel. Cr. P., 247.

SEC. 7692. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

Indictment for forgery. Cr. P., 248.

SEC. 7693. In an indictment for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

Indictment for perjury. Cr. P., 249.

SEC. 7694. In an indictment for the larceny or embezzlement of money, bank notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

Indictment for larceny. N. S

SEC. 7695. An indictment for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

Indictment for selling obscene books, etc. N. S.

SEC. 7696. Upon an indictment against several defendants, any one or more may be convicted or acquitted.

Indictment, number acquitted. Cr. P., 250.

SEC. 7697. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and

Accessory before the fact. Principals, etc. Cr. P., 251.

no other facts need be alleged in any indictment against such an accessory than are required in an indictment against his principal.

Accessory indicted, etc. Cr. P., 252, 253.

SEC. 7698. An accessory to the commission of a felony may be indicted, tried, and punished, though the principal may be neither indicted nor tried.

TITLE VI.

AFTER INDICTMENT AND BEFORE TRIAL.

CHAPTER I.

OF THE ARRAIGNMENT.

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7710. Defendant must be arraigned in the court where the indictment was found or sent.
7711. Defendant, when to be present at arraignment.
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7723. Proceedings on arraignment, when defendant is not indicted by his true name.
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SECTION 7710. When the indictment is filed, the defendant must be arraigned thereon before the court in which it is found.

Defendant arraigned, where. Cr. P., 254.

SEC. 7711. If the indictment is for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel.

When defendant to be present. Cr. P., 255.

SEC. 7712. When his personal appearance is necessary, if he is in custody, the court may direct and the officer in whose custody he is, must bring him before it to be arraigned.

Defendant brought before court. Cr. P., 256.

SEC. 7713. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Bench warrant to issue, when. Cr. P., 257.

SEC. 7714. The clerk, on the application of the District Attorney, may, at any time after the order, whether the court is in sitting or not, issue a bench warrant to one or more counties.

Bench warrant, by whom issued. Cr. P., 258.

SEC. 7715. The bench warrant upon the indictment must, if the offense is a felony, be substantially in the following form:

Form of bench warrant. Cr. P., 259.

County of———.

The Territory of Idaho to any Sheriff, Constable, Marshal, or Policeman of this Territory:

An indictment having been found on the——day of ——, A. D. eighteen ——, in the District Court of the ——Judicial District, in and for the county of ——, charging C. D., with the crime of —— (designating it generally); you are therefore commanded forthwith to arrest the above named C. D., and bring him before that court to answer said indictment; or if the court have adjourned for the term, that you deliver him into the custody of the Sheriff of the County of———.

Given under my hand, with the seal of said court affixed, this——day of——, A. D. ——

By order of said court.

(Seal) E. F., Clerk.

Directions in bench warrant Cr P., 260, 261, 262.

SEC. 7716. The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county in which the indictment is found, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the bench warrant a direction to the following effect, "or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment;" and the court, upon directing it to issue, must fix the amount of bail, and an endorsement must be made thereon and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of —— dollars."

Warrant, how served. Cr. P., 263.

SEC. 7717. The bench warrant may be served in any county, in the same manner as a warrant of arrest.

Proceedings on giving bail. Cr. P., 264.

SEC. 7718. If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

Ordering defendant into custody. Cr P., 265.

SEC. 7719. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order.

When to be committed. Cr. P., 266.

SEC. 7720. If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Defendant's right to counsel Cr. P., 267.

SEC. 7721. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Arraignment, how made. Cr. P., 268.

SEC. 7722. The arraignment must be made by the court, or by the Clerk or District Attorney, under its direction, and consists in reading the indictment to the defendant and delivering to him a copy thereof and of the endorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment.

Proceedings on arraignment. Cr. P., 269, 270, 271.

SEC. 7723. When the defendant is arraigned, he must be informed that if the name by which he is indicted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment. If he gives no other name the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

SEC. 7724. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment. He may, in answer to the arraignment, move to set aside, demur, or plead to the indictment.

How defendant may answer, time, etc. Cr. P., 272, 273.

CHAPTER II.

SETTING ASIDE THE INDICTMENT.

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7730. Indictment, when set aside on motion.
7731. Defendant waives objections, unless he makes the motion.
SECTION
7732. Motion, when heard. If denied or granted, what proceedings are to be had.
7733. Effect of order for submission.
7734. Order no bar to another prosecution.

SECTION 7730. The indictment must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases:

Indictment, when set aside on motion. Cr. P., 274.

1. When it is not found, indorsed and presented as prescribed in this Code;
2. When the names of the witnesses examined before the Grand Jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon;
3. When a person is permitted to be present during the session of the Grand Jury, and when the charge embraced in the indictment is under consideration, except as provided in Chapter III of Title IV.
4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual Grand Juror.

SEC. 7731. If the motion to set aside the indictment is not made, the defendant is precluded from afterwards taking the objections mentioned in the last section.

Objections waived. Cr. P., 276.

SEC. 7732. The motion must be heard at the time it is made, unless for cause the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment, either by demurring or pleading thereto. If the motion is granted, the court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail, that the same be refunded to him, unless it directs that the case be resubmitted to the same or another Grand Jury.

Motion, when heard, proceedings to be had. Cr. P., 277, 278, 279.

SEC. 7733. If the court directs the case to be resubmitted, the defendant, if already in custody, must so remain, unless he is admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment; and, unless a new indictment is found, before the next Grand Jury of the county is discharged, the court must, on the discharge of such Grand Jury, make the order prescribed by the preceding section.

Effect of order for submission. Cr. P., 280, 281.

SEC. 7734. An order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same offense.

Order, no bar to prosecution. Cr. P., 282.

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DEMURRER.

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7750. When objections, forming ground of demurrer, must or may be taken.

Pleading, by defendant. Cr. P., 283.

SECTION 7740. The only pleading on the part of the defendant is either a demurrer or a plea.

Demurrer or plea, when put in. Cr. P., 284.

SEC. 7741. Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

Grounds of demurrer. Cr. P., 285.

SEC. 7742. The defendant may demur to the indictment when it appears upon the face thereof, either:

1. That the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county;
2. That it does not substantially conform to the requirements of sections 7677, 7678 and 7679;
3. That more than one offense is charged in the indictment;
4. That the facts stated do not constitute a public offense;
5. That the indictment contains any matter which, if true, would constitute a legal jurisdiction or excuse of the offense charged, or other legal bar to the prosecution.

Demurrer, how put in, its form. Cr. P., 286.

SEC. 7743. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment, or it must be disregarded.

When heard. Cr. P., 287.

SEC. 7744. Upon the demurrer being filed, the argument upon the objections presented thereby, must be heard, either immediately or at such time as the court may appoint.

Judgment on demurrer. Cr. P., 288.

SEC. 7745. Upon considering the demurrer, the court must give judgment either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

Bar to another prosecution. Cr. P. 289.

SEC. 7746. If the demurrer is allowed, the judgment is final upon the indictment demurred to, and is a bar to another prosecution for the same offense, unless the court being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another Grand Jury.

Defendant discharged, when. Cr. P., 290.

SEC. 7747. If the court does not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him.

Proceedings, submission ordered. Cr. P., 291.

SEC. 7748. If the court directs that the case be resubmitted, the same proceedings must be had thereon as when the indictment is set aside on motion.

When demurrer disallowed. Cr. P., 292.

SEC. 7749. If the demurrer is disallowed, the court must permit the defendant at his election to plead, which he must do forthwith, or at such time as the court may direct. If he does not plead, the plea of not guilty must be entered for him.

Objections may be taken, when. Cr. P., 293.

SEC. 7750. When the objections declared grounds of demurrer by this chapter appear upon the face of the indictment, they can only be taken by demurrer, except that the objections to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offense, may be taken at the trial under the plea of not guilty, or after the trial in arrest of judgment.

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PLEA.

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7761. What is a former acquittal.
7762. Conviction or acquittal on an indictment for a higher offense, effect of.
7763. Defendant refusing to answer, plea of not guilty to be entered.

Pleas, kind of. Cr. P., 294.

SECTION 7755. There are four kinds of pleas to an indictment. A plea of:

1. Guilty;
2. Not guilty;
3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty;
4. Once in jeopardy.

Plea, how put in, its form, Cr. P., 295, 296.

SEC. 7756. Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant pleads guilty:

"The defendant pleads that he is guilty of the offense charged;"

2. If he pleads not guilty:

"The defendant pleads that he is not guilty of the offense charged;"

3. If he pleads a former conviction or acquittal:

"The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of ————, (naming it), rendered at ————, (naming the place), on the —— day of ———."

4. If he plead once in jeopardy:

"The defendant pleads that he had been once in jeopardy for the offense charged (specifying the time, place and court)."

Plea of guilty, how put in, and when withdrawn. Cr. P., 297, 298.

SEC. 7757. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment against a corporation, in which case it may be put in by counsel. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.

Plea of not guilty. Cr. P., 299.

SEC. 7758. The plea of not guilty puts in issue every material allegation of the indictment.

Evidence under plea of not guilty. Cr. P., 300.

SEC. 7759. All matters of fact tending to establish a defense other than former conviction or acquittal, or once in jeopardy, may be given in evidence under the plea of not guilty.

What is not a former acquittal.
Cr. P., 301.

SEC. 7760. If the defendant was formerly acquitted on the ground of variance between the indictment and the proof, or the indictment was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

What is a former acquittal.
Cr. P., 302.

SEC. 7761. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment on which the trial was had.

Conviction, etc., for higher offense, effect of.
Cr. P., 303

SEC. 7762. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment, the conviction, acquittal, or jeopardy is a bar to another indictment for the offense charged in the former, or for an attempt to commit the same, or for an offense included therein, of which he might have been convicted under that indictment.

Defendant refusing to answer, what plea.
Cr. P., 304

SEC. 7763. If the defendant refuses to answer the indictment by demurrer or plea, a plea of not guilty must be entered.

CHAPTER V.

REMOVAL OF THE ACTION BEFORE TRIAL.

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7768. When action may be removed.
7769. Application for removal, how made.
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When action may be removed.
Cr. P., 305.

SECTION 7768. A criminal action, prosecuted by indictment, may be removed from the court in which it is pending on the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the indictment is pending.

Application for removal, how made.
Cr. P., 306

SEC. 7769. The application must be made in open court and in writing, verified by the affidavit of the defendant, a copy of which must be served upon the District Attorney at least one day before the application is made. Whenever the affidavit shows that the defendant cannot safely appear in person to make the application, because the popular excitement against him is so great as to endanger his personal safety, and such statement is sustained by other testimony, the application may be made by counsel, and heard and determined in the absence of the defendant, though he is indicted for felony, and has not at the time of such application been arrested, or given bail, or been arraigned, or pleaded or demurred to the indictment.

Application, when granted.
Cr. P., 307.

SEC. 7770. If the court is satisfied that the representation of the defendant is true, an order must be made for the removal of the action to the proper court of a county free from a like objection.

Order of removal
Cr. P., 308

SEC. 7771. The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

Proceedings on removal.
Cr. P., 309.

Sec. 7772. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned, to the custody or the sheriff of the county to which the action is removed.

Authority of court, etc.
Cr. P., 310.

Sec. 7773. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must, at any time, upon application of the District Attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained. The costs accruing upon such removal and trial are a charge against the county in which the indictment was found.

Clerk to certify amount of costs.
Cr. P., 673.

Sec. 7774. The clerk of the court in the county to which such action is, or may be, removed, must certify the amount of said costs to the auditor of the proper county, which must be allowed and paid as other county charges.

CHAPTER VI.

The Mode of Trial.

Section.
7780. Issue of fact defined.
7781. How tried.
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Issue of fact defined.
Cr. P., 311.

Section 7780. An issue of fact arises:

1. Upon a plea of not guilty;
2. Upon a plea of a former conviction or acquittal of the same offense;
3. Upon a plea of once in jeopardy.

How tried.
Cr. P., 312.

Sec. 7781. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases not amounting to felony, by the consent of both parties expressed in open court, and entered in its minutes. In cases of misdemeanor the jury may consist of twelve, or any number less than twelve upon which the parties may agree in open court.

Presence of defendant.

Sec. 7782. If the indictment is for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant.

CHAPTER VII.

Formation of Trial Jury.

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7787. Formation of trial jury.
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7790. Defendant entitled to two days to prepare for trial.

Trial jury, formation of.
Cr. P., 313.

Section 7787. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

Clerk to prepare calendar.
Cr. P., 314.

Sec. 7788. The clerk must prepare a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail.

Disposing of issues on calendar. Cr. P., 315.

SEC. 7789. The issues on the calendar must be disposed of in the following order, unless upon application of either party, for good cause shown by affidavit, and upon two days notice to the opposite party, with service of a copy of the affidavit in support of the application, the court shall direct an indictment to be tried out of its order:

1. Indictments for felony, when the defendant is in custody;
2. Indictments for misdemeanor, when the defendant is in custody;
3. Indictments for felony, when the defendant is on bail;
4. Indictments for misdemeanor, when the defendant is on bail.

Time allowed to prepare. Cr. P., 316.

SEC. 7790. After his plea, the defendant is entitled to at least two days to prepare for trial.

CHAPTER VIII.

POSTPONEMENT OF THE TRIAL.

SECTION
7795. Postponement, when, and how ordered.

Postponement, when, and how ordered. Cr. P., 317.

SECTION 7795. When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause, direct the trial to be postponed to another day of the same or of the next term.

TITLE VII.

DURING TRIAL AND BEFORE JUDGMENT.

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CHALLENGING THE JURY.

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SECTION 7815. A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel;
2. To an individual juror.

Definition and diversion of challenges. Cr. P., 318.

SEC. 7816. When several defendants are tried together they cannot sever their challenges, but must join therein.

Severing in challenges. Cr. P., 319.

SEC. 7817. The panel is a list of jurors returned by a Sheriff, to serve at a particular court or for the trial of a particular action.

Panel defined. Cr. P., 320.

SEC. 7818. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

Challenge to jury defined. Cr. P., 321.

SEC. 7819. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the Sheriff to summon one or more of the jurors drawn.

Upon what founded. Cr. P., 322.

SEC. 7820. A challenge to the panel must be taken before a juror is sworn, and must be in writing, and must plainly and distinctly state the facts constituting the ground of challenge.

When and how taken. Cr. P., 323.

SEC. 7821. If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Sufficiency of challenge denied, etc. Cr. P., 324, 325.

Exception overruled, court may allow denial.
Cr. P., 326.

SEC. 7822. If, on the exception, the court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment of the challenge.

Denial of challenge, how made.
Cr. P., 327, 328.

SEC. 7823. If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

Who may be examined.

Challenge when jury is summoned but not drawn, etc.
Cr. P., 329.

SEC. 7824. When the panel is formed or in part formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner, as if made to a juror.

Jury to be discharged, when; to be impaneled, when.
Cr. P., 330.

SEC. 7825. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury, so far as the trial of the indictment in question is concerned. If it is disallowed, the court must direct the jury to be impaneled.

Defendant's right to challenge.
Cr. P., 331.

SEC. 7826. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror he must do so before the jury is sworn.

Challenge, kinds of.
Cr. P., 332.

SEC. 7827. A challenge to an individual juror is either:

1. For cause; or,
2. Peremptory.

Challenge, when taken.
Cr. P., 333.

SEC. 7828. It must be taken before the jury is sworn to try the cause.

Peremptory challenge, how taken.
Cr. P., 334.

SEC. 7829. A peremptory challenge can be taken by either party and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

Number of peremptory challenges.
Cr. P., 335.

SEC. 7830. If the offense charged is punishable with death, or with imprisonment in the Territorial prison for life, the defendant is entitled to ten and the Territory to five peremptory challenges. On a trial for any other offense, the defendant is entitled to six and the Territory to three peremptory challenges.

Challenges for cause.
Cr. P., 336.

SEC. 7831. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either:

1. General—That the juror is disqualified from serving in any case; or,
2. Particular—That he is disqualified from serving in the action on trial.

General causes of challenge.
Cr. P., 337.

SEC. 7832. General causes of challenge are:

1. A conviction of felony;
2. A want of any of the qualifications prescribed by law to render a person a competent juror;
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as render him incapable of performing the duties of a juror.

SEC. 7833. Particular causes of challenge are of two kinds:

Particular causes of challenge. Cr. P., 338.

1. For such a bias as, when the existence of the fact ascertained, in judgment of law disqualifies the juror, and which is known in this Code as implied bias;

2. For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which in the exercise of a sound discretion on the part of the trier leads to the inference that he will not act with entire impartiality, and which is known in this Code as actual bias.

SEC. 7834. A challenge for implied bias may be taken for all or any of the following causes and for no other:

Grounds of challenge, for implied bias. Cr. P., 339.

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family or boarder or lodger of the defendant, or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury which has tried another person for the offense charged in the indictment;

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside or which was discharged without a verdict, after the case was submitted to it, or being a witness for the prosecution, or subpœnaed as such;

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged;

9. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

SEC. 7835. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Exemption, no ground of challenge. Cr. P., 340.

SEC. 7836. In a challenge for implied bias, one or more of the legal causes must be alleged. In a challenge for actual bias, it must be alleged that the juror is biased against the party challenging. In either case the challenge may be oral, but must be entered on the minutes of the court.

Causes of challenge, how stated. Cr. P., 341.

SEC. 7837. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon. The ad-

Exceptions to challenge. Cr. P., 342.

verse party may also orally deny the facts alleged as the ground of challenge.

Challenge, how tried. Cr. P., 343.

SEC. 7838. If the facts are denied, the challenge must be tried as follows:

1. If it be for implied bias, by the court.
2. If it be for actual bias, by triers.

Triers, how appointed. Cr. P., 344.

SEC. 7839. The triers are three impartial persons, not on the jury panel, appointed by the court. All challenges for actual bias must be tried by three triers thus appointed, a majority of whom may decide.

Oath of triers. Cr. P., 345.

SEC. 7840. The triers must be sworn generally to inquire whether or not the several persons who may be challenged are biased against the challenging party, and to decide the same truly, according to the evidence.

Juror challenged to be examined as a witness. Cr. P., 346.

SEC. 7841. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

Evidence, rules of, on trial of challenge. Cr. P., 347.

SEC. 7842. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

Challenge for implied bias. Cr. P., 348.

SEC. 7843. On the trial of a challenge for implied bias, the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly upon the minutes.

Instruction to triers. Cr. P., 349.

SEC. 7844. On the trial of a challenge for actual bias, when the evidence is concluded the court must instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial; and that if, from the evidence, they believe him free from such bias, they must find the challenge not true; the court can give no other instruction.

Verdict of triers. Cr. P., 350.

SEC. 7845. The triers must thereupon find the challenge either true or not true, and their decision is final. If they find it true, the juror must be excluded.

Challenges by people and defendant. Cr. P., 351.

SEC. 7846. All challenges to an individual juror, except peremptory, must be taken, first by the people, and then by the defendant, and each party must exhaust all his challenges for cause before the other begins.

Order of challenges. Cr P., 352.

SEC. 7847. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror, for a general disqualification;
3. To an individual juror, for an implied bias;
4. To an individual juror, for an actual bias.

How peremptory challenges are taken. Cr. P., 353

SEC. 7848. After the jury is passed for cause, both parties alternately, beginning with the people, may take their peremptory challenges. But no challenge is lost by failure to alternate if the panel is opened by the other party; and each party is entitled to a full panel before exercising a peremptory challenge.

CHAPTER II.

THE TRIAL.

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Order of trial. Cr. P., 354.

SECTION 7855. The jury having been impaneled and sworn, the trial must proceed in the following order:

1. If the indictment is for a felony, the Clerk must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with;
2. The District Attorney or the counsel for the people must open the cause and offer the evidence in support of the indictment;
3. The defendant or his counsel may then open the defense and offer his evidence in support thereof;
4. The parties may then respectively offer rebutting testimony only, unless the court for good reason, in furtherance of justice, permit them to offer evidence upon their original case;
5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the District Attorney or other counsel for the people must open and the District Attorney may conclude the argument;
6. The Judge must then charge the jury if requested by either party; he may state the testimony and declare the law, but must not charge the jury in respect to matters of fact; such charge must be reduced to writing before it is given, unless by the mutual consent of the parties it is given orally.

Order departed from, when. Cr. P., 355.

SEC. 7856. When the state of the pleadings require it, or in any other case for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

Number of counsel who may argue. Act Jan. 22, 1881

SEC. 7857. If the indictment is for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it is for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

Defendant presumed to be innocent. Cr. P., 357.

SEC. 7858. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

Reasonable doubt, etc., as to degree. Cr. P., 358.

SEC. 7859. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

Separate trials. Cr. P., 359.

SEC. 7860. When two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately. In other cases the defendants jointly indicted may be tried separately or jointly in the discretion of the court.

Discharging defendants. Cr. P., 360.

SEC. 7861. When two or more persons are included in the same indictment, the court may, at any time before the defendants have gone into their defense, on the application of the District Attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the people.

Discharging defendants. Cr. P., 361.

SEC. 7862. When two or more persons are included in the same indictment, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendants.

Effect of discharge. Cr. P., 362.

SEC. 7863. The order mentioned in the last two sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

Rules of evidence applicable. N. S.

SEC. 7864. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this Code.

Evidence on trial for conspiracy. N. S.

SEC. 7865. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment, nor unless one of the acts alleged is proved; but other overt acts not alleged in the indictment may be given in evidence.

Burden of proof in trials for murder. Cr., 33.

SEC. 7866. Upon a trial for murder, the commission of the homicide by the defendant being proved, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof in the case tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

Evidence on a trial for bigamy. N. S.

SEC. 7867. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this Territory, proof of that fact, accompanied with proof of cohabitation thereafter in this Territory, is sufficient to sustain the charge.

SEC. 7868. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing or attempting to pass, or having in possession, with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by a general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Forging bank bills, etc. Cr., 85, 86.

Experts.

SEC. 7869. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of eighteen years, for the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she be corroborated by other evidence.

Trial for abortion, etc. N. S.

SEC. 7870. Upon a trial for having, with intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person, any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language, unaccompanied by a false token or writing, unless the pretense or some note or memorandum thereof be in writing, subscribed by or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness, and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

False pretense. N. S.

SEC. 7871. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

Testimony of accomplice. Cr. P., 364.

SEC. 7872. The court may direct the jury to be discharged where it appears that it has not jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense punishable by law.

Jury, discharge of. Cr. P., 365.

SEC. 7873. If the jury is discharged because the court has not jurisdiction of the offense charged in the indictment, and it appears that it was committed out of the jurisdiction of this Territory, the defendant must be discharged.

Jurisdiction, etc. Cr. P., 366.

SEC. 7874. If the offense was committed within the exclusive jurisdiction of another county of this Territory, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county, and, if not sooner arrested thereon, will attend at the office of the Sheriff of the county where the trial was had, at a certain time par

When offense committed in another county, proceedings. Cr. P., 367, 368.

ticularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment, and of all the papers filed in the action, to the District Attorney of the proper county, the expense of which transmission is chargeable to that county.

Same. Cr. P., 369, 370.

SEC. 7875. If the defendant is not arrested on a warrant from the proper county, as provided in the last section, he must be discharged from custody, or his bail in the action exonerated, or money deposited instead of bail, must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

Facts not constituting an offense. Cr. P., 371.

SEC. 7876. If the jury is discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has depostied money instead of bail, that the money be refunded to him, unless in its opinion a new indictment can be framed upon which the defendant can be legally convicted, in which case it may direct that the case be submitted to the same or another Grand Jury.

Court may advise jury Cr. P., 373.

SEC. 7877. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it must advise the jury to acquit the defendant. But the jury are not bound by the advice.

View of premises by jury. Cr. P., 374, 375.

SEC. 7878. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

Knowledge of juror. Cr. P., 376.

SEC. 7879. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury may return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

Jurors may be permitted to separate. Act Jan, 22, 1881.

SEC. 7880. The jury sworn to try an indictment for any offense, except murder, may, at any time during the trial, before the submission of the cause, in the discretion of the court, be permitted to separate, or they may be kept together, in charge of a proper officer. In case the court orders the jury to be kept together, the sheriff must provide a suitable place for the board and lodging of the jury, at the expense of the county, and at each recess and adjournment, the officer must be sworn to keep the jury together until the next meeting of the court; to suffer no person to speak to or communicate with them, or either of them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof. In all trials for murder, the jury must be kept together.

SEC. 7881. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

Jury must be admonished, etc. Cr. P., 378.

SEC. 7882. If, before the conclusion of the trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case a new juror may be sworn and the trial begin anew, or the jury may be discharged and a new jury then or afterwards impaneled.

Juror unable to perform duties. Cr. P., 379. Cr. P., 380.

SEC. 7883. The court must decide all questions of law which arise in the course of a trial.

Court to decide questions of law.

SEC. 7884. On the trial of an indictment for libel, the jury have the right to determine the law and the fact.

Jury to determine law, etc., when libel. Cr, P., 381.

SEC. 7885. On the trial of an indictment for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

Court to decide questions of law. Cr. P., 382.

SEC. 7886. In charging the jury, the court must state to them all matters of law necessary for their information. Either party may present to the court any written charge and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must indorse and sign its decision. If part be given and part refused the court must distinguish, showing by the indorsement what part of the charge was given and what part refused.

Charging the jury. Cr. P., 383, 384, 385.

SEC. 7887. After hearing the charge, the the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

Jury, where they may decide. Cr. P., 386.

SEC. 7888. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

Defendant may be committed. Cr. P., 387.

SEC. 7889. If the District Attorney fails to attend at the trial, the court must appoint some attorney at law to perform the duties of the District Attorney on such trial.

District Attorney failing to attend. N. S.

CHAPTER III.

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Accommodations for jury. Cr. P., 388.

SECTION 7900. A room must be provided by the Commissioners of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery. If the Commissioners neglect, the court may order the Sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Accommodations for jury. Cr P., 389.

SEC. 7901. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the Sheriff, at the expense of the county, with suitable and sufficient food and lodging.

What papers jury may take Cr P., 390, 391.

SEC. 7902. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

May return into court for information. Cr. P., 392.

SEC. 7903. After the jury have retired for deliberation, if there is any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court, Upon being brought into court, the information required must be given in the presence of, or after notice to, the District Attorney, and the defendant or his counsel, or after they have been called.

Juror becomes sick, what to be done. Cr. P., 393.

SEC. 7904. If, after the retirement of the jury one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

Not to be discharged, when. Cr. P., 394.

SEC. 7905. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict and rendered it in open court, unless by consent of both parties entered upon the minutes, or unless at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

When the cause to be again tried. Cr. P., 395

SEC. 7906. In all cases where a jury are discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged from the indictment during the progress of the trial or after the cause is submitted to them, the cause may be again tried at the same or another term.

SEC. 7907. While the jury are absent, the court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged.

Court may adjourn during absence of jury.
Cr. P., 396.

SEC. 7908. A final adjournment of the court discharges the jury.

Final adjournment
Cr. P., 397.

SEC. 7909. When two or more counties are joined for judicial purposes, the expense of the trial of a cause must be paid by the county where the offense is alleged to be committed.

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THE VERDICT.

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SECTION 7915. When the jury have agreed upon their verdict they must be conducted into court by the officer having them in charge. Their names must be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried at the same, or another term.

Return of jury.
Cr. P., 399.

SEC. 7916. If indicted for a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence.

Appearance of defendant.
Cr. P., 400.

SEC. 7917. When the jury appear they must be asked by the court, or clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

Manner of taking verdict.
Cr. P., 401.

SEC. 7918. The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may except upon an indictment for libel, find a special verdict.

Verdict, kind of.
Cr. P., 402.

SEC. 7919. A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imparts a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof."

General verdict.
Cr. P., 403.

Special verdict.
Cr. P., 404.

SEC. 7920. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and these conclusions of fact must be so presented, as that nothing remains to the court but to draw conclusions of law upon them.

Verdict, how rendered.
Cr. P., 405.

SEC. 7921. The special verdict must be reduced to writing by the jury, or in their presence entered upon the minutes of the court, read to the jury and agreed to by them, before they are discharged.

Verdict, form of
Cr. P., 406.

SEC. 7922. The special verdict need not be in any particular form, but is sufficient if it present intelligibly the facts found by the jury.

Judgment on verdict.
Cr. P., 407.

SEC. 7923. The court must give judgment upon the special verdict as follows:

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given;

2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal.

When verdict defective.
Cr. P., 408.

SEC. 7924. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact, from the evidence, as established to their satisfaction, the court must order a new trial.

Jury to find degree of crime.
Cr. P., 409.
Cr., 17.

SEC. 7925. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

Jury may convict of lesser offense.
N. S.

SEC. 7926. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit the offense.

Verdict as to some defendants, and another trial as to others.
Cr. P., 410.

SEC. 7927. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the others may be tried by another jury.

When court may direct a reconsideration.
Cr. P., 411, 412.

SEC. 7928. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it. If the jury render a verdict which is neither general nor special, the court may direct them to reconsider it, and it cannot be recorded until it is rendered in some form from which it can be clearly understood that the intent of the jury is either to render a general verdict or to find the facts specially and to leave the judgment to the court.

Judgment on informal verdict.
Cr. P., 413.

SEC. 7929. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment is given against him on a special verdict.

Polling the jury. Cr. P., 414.

SEC. 7930. When a verdict is rendered, and before it is recorded, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

Recording the verdict. Cr. P., 415.

SEC. 7931. When the verdict given is such as the court may receive, the clerk must immediately record it in full upon the minutes, read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

Defendant, when to be discharged. Cr. P., 416.

SEC. 7932. If judgment of acquittal is given on a general verdict and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the proof and the indictment, which may be obviated by a new indictment, the court may order his detention to the end that a new indictment may be preferred, in the same manner and with like effect as provided in case where the indictment does not state a public offense.

General verdict of conviction. Cr. P., 417.

SEC. 7933. If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

Proceedings on verdict of acquittal on grounds of insanity. N. S.

SEC. 7934. If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the District Attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the Sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the Sheriff to the Territorial Insane Asylum. If the jury find the defendant sane, he shall be discharged.

CHAPTER V.

BILLS OF EXCEPTION.

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7940. In what cases.
7941. When to be settled and signed.
7942. Exceptions to decision of court by either party.
7943. Exception to decision of court by defendant.

SECTION
7944. Proceedings on settlement of bill of exceptions.
7945. What bill of exceptions is to contain.
7946. Written charges need not be excepted to.

In what cases. Cr. P., 418.

SECTION 7940. On the trial of an indictment, exceptions may be taken by the defendant to a decision of the court.

1. In disallowing a challenge to the panel of the jury, or to an individual juror, for implied bias;

2. In admitting or rejecting testimony, or in charging the triers on the trial of a challenge to a juror for actual bias;

3. In admitting or rejecting testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue.

When to be settled and signed. Cr. P., 419.

SEC. 7941. When a party desires to have the exceptions taken at the trial settled in a bill of exceptions, the draft of a bill must be prepared by him and presented, upon notice of at least two days, to the District Attorney, to the judge for settlement, within ten days after judgment has been rendered against him, unless further time is granted by the Judge, or by a Justice of the Supreme Court, or within that period the draft must be delivered to the Clerk of the Court for the Judge. When received by the Clerk, he must deliver it to the Judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the Judge and filed with the Clerk of the Court.

Exceptions not taken on trial. N. S.

SEC. 7942. Exceptions may be taken by either party to the decision of a court or Judge upon a matter of law:

1. In granting or refusing a motion to set aside an indictment;

2. In allowing or disallowing a demurrer to an indictment;

3. In granting or refusing a motion in arrest of judgment;

4. In granting or refusing a motion for a new trial;

5. In making, or refusing to make, an order after judgment, affecting any substantial right of the parties.

Exceptions by defendant. N. S.

SEC. 7943. Exceptions may be taken by the defendant to a decision of the court upon a matter of law:

1. In refusing to grant a motion for a change of the place of trial;

2. In refusing to postpone the trial on motion of the defendant.

Settlement of bill of exceptions. N. S.

SEC. 7944. When a party desires to have the exceptions mentioned in the last two sections settled in a bill of exceptions, the draft of a bill must be prepared by him and presented, upon notice of at least two days to the adverse party, to the Judge for settlement, within ten days after the order or ruling complained of is made, unless further time is granted by the Judge, or by a justice of the Supreme Court, or within that period the draft must be delivered to the Clerk of the Court for the Judge. When received by the Clerk, he must deliver it to the Judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the Judge and filed with the Clerk of the Court. If the Judge in any case refuse to allow an exception in accordance with the facts, the party desiring the bill settled, may apply, by petition to the Supreme Court, to prove the same. The application may be made in the mode and manner, and under such regulations as that court may prescribe; and the bill, when proven, must be certified by the Chief Justice as correct, and filed with the Clerk of the Court in which the action was tried, and when so filed, it has the same force and effect as if settled by the Judge who tried the cause. If the Judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may, nevertheless, settle such bill, or the party may, as provided in this section, apply to the Supreme Court to prove the same.

SEC. 7945. A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken, and the Judge must, upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

Bill of exceptions, what to contain. Cr. P., 420.

SEC. 7946. When written charges have been presented, given, or refused, the questions presented in such charges need not be excepted to or embodied in a bill of exceptions, but the written charges with the endorsements showing the action of the court, form part of the record, and any error in the decision of the court thereon, may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions.

Written charges not to be excepted to.

CHAPTER VI.

NEW TRIALS.

SECTION.	SECTION
7950. New trials defined.	7952. In what cases it may be granted.
7951. Its effect.	7953. Application for, when made.

SECTION 7950. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given.

New trial defined. Cr. P., 423.

SEC. 7951. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument.

Its effect. Cr. P., 423.

SEC. 7952. When a verdict has been rendered against the defendant, the court may, upon his application, grant a new trial in the following cases only:

In what cases it may be granted. Cr. P., 424.

1. When the trial has been had in his absence, if the indictment is for a felony;
2. When the jury has received any evidence out of court other than that resulting from a view of the premises;
3. When the jury has separated without leave of the court after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented;
4. When the verdict has been decided by lot or by any means other than a fair expression of opinion on the part of all the jurors;
5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial;
6. When the verdict is contrary to law or evidence;
7. When new evidence is discovered material to the defendant, and which he could not with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing in support thereof, the affidavits of the witnesses by whom such

evidence is expected to be given, and if time is required by the defendant to procure such affidavits the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

Application for, when made. Cr. P., 425.

SEC. 7953. The application for a new trial may be made before or after judgment; and must be made within ten days after verdict, unless the court or Judge extends the time.

CHAPTER VII.

ARREST OF JUDGMENT.

SECTION
7960. Motion in arrest of judgment defined. Upon what defects founded, and when made.
7961. Court may arrest judgment without motion.
SECTION
7962. Effect of arresting judgment.
7963. Defendant, when to be held or discharged.

Motion in arrest of judgment. Cr. P., 428, 426.

SECTION 7960. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment that are grounds of demurrer unless the objection to the indictment has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment.

Court may arrest judgment. Cr. P., 427.

SEC. 7961. The court may also, on its own view of any of these defects, arrest the judgment without motion.

Effect of. Cr. P., 429.

SEC. 7962. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Defendant, when to be held or discharged. N. S.

SEC. 7963. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment can be framed, upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new indictment. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution or indictment. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment was founded.

TITLE VIII.

OF JUDGMENT AND EXECUTION.

CHAPTER I.

THE JUDGMENT.

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7980. Appointing time for judgment.
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7982. Presence of defendant.
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7991. If no cause shown, judgment to be pronounced.
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7993. Proof of former conviction, or of facts, etc.
7994. Duration of imprisonment or judgment to pay a fine.
7995. Judgment to pay a fine constitutes a lien.
7996. Entry of judgment and judgment roll.

SECTION 7980. After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict, if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed.

Time for judgment.
Cr. P., 430, 431.

SEC. 7981. Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree.

Court to determine degree, when.
Cr., 17.
Cr. P., 432.

SEC. 7982. For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence.

Presence of defendant.
Cr. P., 432.

SEC. 7983. When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so.

Defendant brought before court, when in custody.
Cr. P., 433.

SEC. 7984. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

When on bail.
Cr. P., 434.

SEC. 7985. The clerk, on the application of the district attorney, may, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Bench warrant to issue.
Cr. P., 435.

SEC. 7986. The bench warrant must be substantially in the following form:

Form of bench warrant.
Cr. P., 436.

County of————.

The Territory of Idaho, to any sheriff, constable, marshal, or policeman in this Territory:

A. B., having been on the——day of————, A.D. eighteen hundred and——————, duly convicted in the District Court of the——Judicial district of the Territory of Idaho, in and for the County of—————, of the crime of———— (designating it generally), you are therefore commanded *forthwith to arrest the above named A. B.*, and bring him before that court for judgment; or if the court has adjourned for the term, that you deliver him into the custody of the sheriff of the county of————.

Given under my hand, with the seal of said court affixed, this——day of————, A.D. eighteen hundred and———.

By order of the court.

[Seal.] E. F., Clerk.

Warrant, how served. Cr. P., 437.

SEC. 7987. The bench warrant may be served in any county in the same manner as a warrant of arrest, and when served in another county it need not be indorsed by a magistrate of that county.

Arrest of defendant. Cr. P., 438.

SEC. 7988. Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court or commit him to the officer mentioned in the warrant, according to the command thereof.

Arraignment of defendant. Cr. P., 439.

SEC. 7989. When the defendant appears for judgment he must be informed by the court, or by the clerk, under its direction, of the nature of the indictment and of his plea, and the verdict if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

Cause shown against judgment. Cr. P. 440.

SEC. 7990. He may show, for cause against the judgment:

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him to be insane, the question of insanity must be tried as provided in Chapter VI, Title X, Part II of this Code. If, upon the trial of that question, the jury find that he is sane, judgment must be pronounced, but if they find him insane, he must be committed to the Territorial Insane Asylum until he becomes sane; and when notice is given of that fact, as provided in said Chapter he must be brought before the court for judgment;

2. That he has good cause to offer, either in arrest of judgment or for a new trial, in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment or for a new trial.

Judgment to be pronounced. Cr. P.. 441.

SEC. 7991. If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered.

Court may inquire into circumstances. N. S.

SEC. 7992. After a plea or verdict of guilty, where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.

Proof of facts, etc. N. S

SEC. 7993. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county, out of court, upon such notice to the adverse party as the court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court, or a Judge thereof, in aggravation or mitigation of the punishment, except as provided in this and the preceding section.

Imprisonment. Cr. P., 443. Comp. laws, 806.

SEC. 7994. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every two dollars of the fine.

Fine, etc. Cr. P., 444.

SEC. 7995. A judgment that the defendant pay a fine constitutes a lien, in like manner as a judgment for money rendered in a civil action.

Entry of judgment and judgment roll. Cr. P., 445.

SEC. 7996. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction was had, and must within five days annex together and file the following papers, which constitute a record of the action:

1. A copy of the minutes of a challenge interposed by the defendant to the panel of the Grand Jury, or to an individual Grand Juror, and the proceedings and decision thereon;
2. The indictment and a copy of the minutes of the plea or demurrer;
3. A copy of the minutes of a challenge interposed to the panel of a trial jury or to an individual juror, and the proceedings and decision thereon;
4. A copy of the minutes of the trial;
5. A copy of the minutes of the judgment;
6. The bill of exceptions, if there be one;
7. The written charges asked of the court, and refused, if there be any;
8. A copy of all charges given and of the indorsements thereon.

CHAPTER II.

THE EXECUTION.

SECTION
8005. Authority for the execution of a judgment, other than of death.
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8007. Judgment of fine and imprisonment, by whom and how executed.
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8009. Warrant of execution upon judgment of death. Time of execution.
8010. Judge to transmit statement of conviction and testimony to Governor.
8011. Governor may require opinion of Justice of Supreme Court, etc., thereon.
8012. Judgment of death, when suspended.

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8013. If reason to suppose defendant insane, jury to inquire into it; how and by whom ordered.
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8018. Proceedings upon the finding of the jury.
8019. Proceedings when judgment of death remaining in force has not been executed.
8020. Punishment of death, how inflicted.
8021. Execution, where to take place and who to be present.
8022. Return upon death warrant.

Authority for execution of judgment other than death. Cr. P., 446.

SECTION 8005. When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

Execution to issue as in civil cases, when. Cr. P., 447.

SEC. 8006. If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.

Judgment, how executed, by whom.
Cr. P., 448.

SEC. 8007. If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

Duty of Sheriff, etc,
Act. Feb. 10, 1881.

SEC. 8008. If the judgment is for imprisonment in the Territorial Prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the Territorial Prison. He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant.

Warrant of execution.
Cr. P., 449.

Time of conviction.

SEC. 8009. When judgment of death is rendered, a warrant, signed by the Judge, and attested by the clerk under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than thirty nor more than sixty days from the time of judgment.

Judge to transmit to Governor.
Cr. P., 450.

SEC. 8010. The Judge of the court at which a conviction for murder is had, must, immediately after the conviction, transmit to the Governor, by mail, or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

Opinion of Justice of Supreme Court.
Cr. P., 451.

SEC. 8011. The Governor may thereupon require the opinion of the justices of the Supreme Court and of the Attorney General, or any of them, upon the statement so furnished.

Judgment of death.
Cr. P., 452.

SEC. 8012. No Judge, court or officer, other than the Governor, can suspend the execution of a judgment of death, except the sheriff, as provided in the six succeeding sections, unless an appeal is taken.

If defendant insane, jury to inquire into.
Cr. P., 453.

SEC. 8013. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the sheriff of the county, with the concurrence of the Judge of the court by which the judgment was rendered, may summon from the list of jurors selected by the commissioners for the year, a jury of twelve persons to inquire into the supposed insanity, and must give immediate notice thereof to the District Attorney of the county.

Inquisition. Duty of district attorney.
Cr. P., 454.

SEC. 8014. The District Attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the Grand Jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

Inquisition, how filed, etc.
Cr. P., 455.

SEC. 8015. A certificate of the inqusition must be signed by the jurors and the sheriff, and filed with the Clerk of the court in which the conviction was had.

Proceedings upon finding of jury.
Cr. P., 456, 457.

SEC. 8016. If it is found by the inquisition that the defendant is sane, the sheriff must execute the judgment; but if it is found that he is insane, the sheriff must suspend the execution of the judgment until he receives a warrant from the Governor or from the Judge of the court by which the judgment was rendered directing the execution of the judgment. If the inquisition finds that the defendant is insane, the sheriff must immediately transmit it to the Governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment.

SEC. 8017. If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the Judge of the court by which the judgment was rendered, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the District Attorney of the county, and the provisions of sections 8014 and 8015 apply to the proceedings upon the inquisition.

Proceedings when female supposed to be pregnant. Cr. P., 458

SEC. 8018. If it is found by the inquisition that the female is not pregnant, the sheriff must execute the judgment; if it is found that she is pregnant, the sheriff must suspend the execution of the judgment, and transmit the inquisition to the Governor. When the Governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

Finding of jury case of pregnancy. Cr. P., 459, 460.

SEC. 8019. If for any reason a judgment of death has not been executed and it remains in force, the court in which the conviction was had, on the application of the District Attorney, must order the defendant to be brought before it, or if he is at large, a warrant for his apprehension may be issued. Upon the defendant being brought before the court it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the sheriff execute the judgment at a specified time. The sheriff must execute the judgment accordingly.

Judgment of death remaining in force. Cr. P., 461, 462.

SEC. 8020. The punishment of death must be inflicted by hanging the defendent by the neck until he is dead.

Punishment of death. Cr. P., 463.

SEC. 8021. The judgment of death must be executed within the walls or yard of a jail, or some convenient private place in the county. The sheriff of the county must be present at the execution, and must invite the presence of a physician, the District Attorney of the county, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be allowed to witness the same.

Executions, place of, whom present. Cr. P., 463.

SEC. 8022. After the execution, the Sheriff must make a return upon the death warrant, showing the time, mode, and manner in which it was executed.

Return upon death warrant. Cr. P., 464.

TITLE IX.

OF APPEALS TO THE SUPREME COURT.

CHAPTER I.

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Appeal.
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SECTION 8040. Either party in a criminal action in the District Court may appeal to the Supreme Court, on questions of law alone, as prescribed in this chapter.

Parties on appeal, how designated.
Cr. P., 466.

SEC. 8041. The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal.

Defendant may take appeal, when.
Cr. P., 465.

SEC. 8042. An appeal may be taken by the defendant:

1. From a final judgment of conviction;
2. From an order denying a motion for a new trial;
3. From any order made after judgment, affecting the substantial rights of the party.

In what cases by the people.
Cr. P., 465.

SEC. 8043. An appeal may be taken by the Territory:

1. From a judgment for the defendant on a demurrer to the indictment;
2. From an order granting a new trial;
3. From an order arresting judgment;
4. From any order made after judgment, affecting the substantial rights of the prosecution.

Appeals, time of.
Cr. P., 468.

SEC. 8044. An appeal from a judgment must be taken within one year after its rendition, and from an order, within sixty days after it is made.

Appeal, how taken.
Cr. P., 469, 470, 471.

SEC. 8045. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered or filed, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party.

Notice, service by publication.
Cr. P., 471, 472.

SEC. 8046. If personal service of the notice cannot be made, the Judge of the Court in which the action was tried, upon proof thereof, may make an order for the publication of the notice in some newspaper for a period not exceeding thirty days; such publication is equivalent to personal service.

Effect of appeal by people.
Cr. P., 473.

SEC. 8047. An appeal taken by the people in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

Effect of appeal by defendant.
Cr. P. 474.

SEC. 8048. An appeal to the Supreme Court from a judgment of conviction, stays the execution of the judgment in all capital cases, and in all other cases, upon filing with the clerk of the court in which the conviction was had, a certificate of the Judge of such Court, or of a Justice of the Supreme Court, *that, in his opinion, there is probable cause* for the appeal, but not otherwise.

SEC. 8049. If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on appeal.

Effect of appeal by defendant. Cr. P., 474.

SEC. 8050. If, before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

Effect of appeal by defendant. Cr. P., 474.

SEC. 8051. Upon the appeal being taken, the clerk with whom the notice of appeal is filed must, within ten days thereafter, in case the bill of exception has been settled by the Judge before the giving of said notice, but if not, then within ten days from the settlement of the bill of exceptions, without charge, transmit to the Clerk of the Appellate Court a copy of the notice of appeal, and of the record, and of all bills of exceptions, instructions, and indorsements thereon; and, upon the receipt thereof, the Clerk of the Appellate Court must file the same and perform the same services as in civil cases, without charge.

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Irregularity. Cr. P., 476.

SEC. 8057. The court may also, upon like motion, dismiss the appeal, if the return is not made as provided in the last chapter, unless, for good cause, they enlarge the time for that purpose.

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Judgment, etc. Cr. P., 479.

SEC. 8064. Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it. In any other case the court

Number of counsel. Cr. P., 480.

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SECTION 8070. After hearing the appeal, the Court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties.

Review. Cr. P., 467.

SEC. 8071. Upon an appeal taken by the defendant from a judgment, the Court may review any intermediate order or ruling involving the merits, or which may have affected the judgment.

May reverse, affirm or modify. New trial. Cr. P., 483.

SEC. 8072. The Court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm or modify any or all the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial.

Place of new trial. Cr. P., 484.

SEC. 8073. When a new trial is ordered, the cause shall be remanded to the District Court of the county from which the appeal was taken.

Defendant, when to be discharged. Cr. P., 485.

SEC. 8074. If a judgment against the defendant is reversed without ordering a new trial, the Appellate Court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

Judgment to be executed. Cr. P., 486.

SEC. 8075. If a judgment against the defendant is affirmed, the original judgment must be enforced.

Judgment of appellate Court. Cr. P., 487.

SEC. 8076. When the judgment of the Appellate Court is given, it must be entered in the minutes, and a certified copy of the entry forthwith transmitted to the Clerk of the Court from which the appeal was taken.

Jurisdiction of appellate court. Cr. P., 489.

SEC. 8077. After the certificate of the judgment has been remitted to the Court below, the Appellate Court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the Court to which the certificate is remitted.

TITLE X.

MISCELLANEOUS PROCEEDINGS.

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SECTION 8100. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Admission to bail.
Cr. P., 490.

SEC. 8101. The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the Territory a specified sum.

Taking of bail defined.
Cr. P., 491.

SEC. 8102. A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumption to be drawn therefrom.

Offense not bailable.
Cr. P., 492.

SEC. 8103. If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

Admittance to bail before conviction.
Cr. P., 493.

SEC. 8104. After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail:

After conviction.
Cr. P., 495.

1. As a matter of right, when the appeal is from a judgment imposing a fine only;
2. As a matter of discretion in all other cases.

SEC. 8105. If the offense is bailable, the defendant may be admitted to bail before conviction:

Nature of bail.
Cr. P., 496, 497.

1. For his appearance before the magistrate on the examination of the charge, before being held to answer;

2. To appear at the court to which the magistrate is required to return the depositions upon the defendant being held to answer after examination;

3. After indictment, either before the bench warrant is issued for his arrest or upon any order of the court committing him or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be transferred for trial. And after conviction, and upon an appeal

1. If the appeal is from a judgment imposing a fine only, on the undertaking of bail, that the will pay the same, or such part of it as the Appellate Court may direct, if the judgment is affirmed or modified, or the appeal is dismissed;

2. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed; or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof.

Bail, matter of discretion. Cr. P., 494.

SEC. 8106. When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the District Attorney of the county.

What magistrates may admit to bail. Cr. P., 498.

SEC. 8107. When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

Bail, form of undertaking. Cr. P., 479.

SEC. 8108. Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form: An order having been made on the——day of——A. D. eighteen——by A. B., a Justice of the Peace of——County (or as the case may be), that C. D. be held to answer upon a charge of (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of——dollars; we E. F. and G. H. (stating their place of residence), hereby undertake that the above named C. D. will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment and render himself in execution thereof, or if he fails to perform either of these conditions, that we will pay to the people of the Territory of Idaho, the sum of——dollars (inserting the sum in which the defendant is admitted to bail).

Qualifications of bail. Cr. P., 500.

SEC. 8109. The qualifications of bail are as follows:

1. Each of them must be a resident, householder, or free holder within the Territory; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered;

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than

that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

Bail, how to justify. Cr. P., 501, 502.

SEC. 8110. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

Defendant to be discharged, when. N. S.

SEC. 8111. Upon the allowance of bail and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged.

When offense is not capital. Cr. P., 503.

SEC. 8112. When the offense charged in the indictment is not punishable with death, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail.

When offense is capital. Cr. P., 504.

SEC. 8113. If the offense charged in the indictment is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant.

Bail on habeas corpus. Cr. P., 505.

SEC. 8114. When the defendant is so delivered into custody, he must be held by the Sheriff, unless admitted to bail on examination upon a writ of habeas corpus.

Form of undertaking. Cr. P., 506.

SEC. 8115. The bail must be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found on——day of—— A. D. eighteen——————, in the District Court of the County of———, charging A. B. with the crime of——— (designating it generally), and he having been admitted to bail in the sum of———dollars, we, C. D. and E. T., of——— (stating their place of residence), hereby undertake that the above named A. B. will appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the Territory of Idaho, the sum of——— dollars (inserting the sum in which the defendant is admitted to bail).

Sections applicable. Cr. P., 507.

SEC. 8116. The provisions contained in this chapter in relation to bail before indictment, apply to the qualifications of the bail, and to all the proceedings respecting the putting in and justifying of bail and incident thereto.

Increase or reduction of bail. N. S.

SEC. 8117. After a defendant has been admitted to bail upon an indictment, the court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the District Attorney.

Who may admit to bail.
Cr. P., 508.

SEC. 8118. In cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus, or by the magistrate before whom the trial was had.

Qualifications of bail.
Cr. P., 510.

SEC. 8119. The bail must possess the qualifications, and must be put in in all respects as provided in this chapter, except that the undertaking must be conditioned as prescribed for undertakings of bail on appeal.

Deposit, when and how made.
Cr. P., 571.

SEC. 8120. The defendant at any time after an order admitting him to bail, instead of giving bail may deposit with the Clerk of the Court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is, a certificate of the deposit, he must be discharged from custody.

Deposit.
Cr. P., 512.

SEC. 8121. If the defendant has given bail, he may at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made, the bail is exonerated.

Payment of fine, etc.
Cr. P., 513.

SEC. 8122. When the money has been deposited, if it remains on deposit at the time of the judgment for the payment of a fine, the Clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

Surrender.
Cr. P., 515, 514.

SEC. 8123. At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender;

2. Upon the undertaking and the certificate of the officer, the court in which the action or appeal is pending may, upon notice of five days to the District Attorney of the county, with a copy of the undertaking and a certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

Defendant may be arrested for surrender, by whom.
Cr. P., 516.

SEC. 8124. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the Territory, may themselves arrest him, or by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

When money to be refunded on surrender.
Cr. P., 517.

SEC. 8125. If money has been deposited instead of bail, and the defendant at any time before the forfeiture thereof, surrenders himself to the officer to whom the commitment was directed in the manner provided in the last two sections, the court must order a return of the deposit to the defendant upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the District Attorney, with a copy of the certificate.

Forfeiture, in what cases and how ordered.
Cr. P., 518, 519.

SEC. 8126. If without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon the minutes and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

Forfeiture, how enforced. Cr. P., 520.

SEC. 8127. If the forfeiture is not discharged, as provided in the last section, the District Attorney may, at any time after the adjournment of the court, proceed by action only against the bail upon their undertaking.

Deposit, when forfeited. Cr. P., 521.

SEC. 8128. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, immediately after the final adjournment of the court, pay over the money deposited to the County Treasurer.

In what cases defendant committed. Cr. P., 522.

SEC. 8129. The court to which the committing magistrate returns the depositions, or in which an indictment or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof;
2. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the Territory;
3. Upon an indictment being found in the cases provided in section 7719.

Contents of order. Cr. P., 523.

SEC. 8130. The order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, constable, marshal, or policeman in this Territory, and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged.

Defendant may be arrested in any county. Cr. P., 524.

SEC. 8131. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county.

Defendant to be committed, when. Cr. P., 525.

SEC. 8132. If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

When admitted to bail. Cr. P., 526.

SEC. 8133. If the order be made for any other cause, and the offense is bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

Bail, by whom taken. Cr. P., 527.

SEC. 8134. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county, having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the court.

Form of undertaking. Cr. P., 528.

SEC. 8135. When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following forms:

An order having been made on the ——— day of ———, A. D. eighteen ————, by the court (naming it), that A. B. be admitted to bail in the sum of ———— dollars in an action pending in that court against him in behalf of the Territory of Idaho, upon an (information, presentment, indictment, or appeal, as the case may be), we, C. D. and E. F., of (stating their places of residence,) hereby undertake that the above named A. B. will appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and will at all times render himself amenable to its orders and process and appear for judgment and surrender himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the Territory of Idaho the sum of ———— dollars (insert the sum in which the defendant is admitted to bail).

Bail, qualifications. Cr. P., 529.

SEC. 8136. The bail must possess the qualifications and must be put in, in all respects in the manner prescribed in this chapter.

CHAPTER II.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

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8141. Who are competent witnesses.
8142. When husband and wife are not competent witnesses.
SECTION
8143. When the defendant is not a competent witness.

Witnesses who are competent. Cr., 12, 13.

SECTION 8141. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this Code.

Husband and wife, witnesses. N. S.

SEC. 8142. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other in a criminal action or proceeding to which one or both are parties.

When defendant not competent. Cr., 12.

SEC. 8143. A defendant in a criminal action or proceeding to which he is a party, is not, without his consent, a competent witness for or against himself. His neglect or refusal to give such consent shall not in any manner prejudice him nor be used against him on the trial or proceeding.

CHAPTER III.

COMPELLING THE ATTENDANCE OF WITNESSES.

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8149. Form of subpœna.
8150. Subpœna, by whom and how served.
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8153. Disobedience to subpœna, etc.
8154. Failure to appear, undertaking forfeited.
8155. Temporary removal of imprisoned witnesses.

Subpœna. Cr. P., 530.

SECTION 8148. The process by which the attendance of a witness before a court or magistrate is required is a subpœna; it may be signed and issued by:

Cr. P., 531.

1. A magistrate before whom an information is laid, for witnesses in the Territory, either on behalf of the people or of the defendant:

Cr. P., 532.

2. The District Attorney, for witnesses in the Territory in support of the prosecution, or for such other witnesses as the Grand Jury, upon an investigation pending before them may direct;

Cr. P., 533.

3. The District Attorney, for witnesses in the Territory, in support of an indictment, to appear before the court in which it is to be tried;

Cr. P., 534.

4. The Clerk of the Court in which an indictment is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank subpœnas, subscribed by him as Clerk, for witnesses in the Territory, as the defendant may require.

Form of subpœna. Cr. P., 535, 536.

SEC. 8149. A subpœna authorized by the last section must be substantially in the following form:

The Territory of Idaho to A. B.:

You are commanded to appear before C. D., a justice of the peace of————Precinct, in————County (or as the case may be), at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the Territory of Idaho against E. F.

Given under my hand this——day of————, A.D. eighteen————. G. H., Justice of the Peace, (or "J. K., District Attorney", or "By order of the Court, L. M., Clerk," or as the case may be). If book, papers, or documents are required, a direction to the following effect must be contained in the subpœna: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

Subpœna, serving of. Cr. P., 537, 538.

SEC. 8150. A subpœna may be served by any person, but a peace officer must serve in his county any subpœna delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally and informing him of its contents.

Mileage of witnesses, per diem of, etc. Act Feb. 10, 1881.

SEC. 8151. When a person shall attend before a grand jury, or the District Court, as a witness on behalf of the people, upon a subpœna, or pursuant to an undertaking, such person shall receive the sum of twenty-five cents a mile one way for each mile actually traveled, but no person can receive more than one mileage under this section, at one term of the District Court; and such person shall also receive one dollar per day for each days actual attendance as such witness. Such mileage and per diem must be paid out of the county treasury of the county where such District Court is held, upon the certificate of the clerk of said court.

Compulsory attendance o witnesses. Cr. P., 541.

SEC. 8152. No person is obliged to attend as a witness before a court or magistrate out of the county where the witness resides or is served with the subpœna, unless the Judge of the court in which the offense is triable, or a justice of the Supreme Court, or a Probate Judge, upon an affidavit of the District Attorney or prosecutor, or of the defendant or his counsel, stating that he believes the evidence of the witness is material, and his attendance at the examination or trial necessary, shall indorse on the subpœna an order for the attendance of the witness.

Subpœna, disobedience to. Cr. P., 542, 544.

SEC. 8153. Disobedience to a subpœna, or a refusal to be sworn or to testify as a witness, may be punished by the court or magistrate as a contempt. A witness disobeying a subpœna issued on the part of the defendant, unless he show good cause for his non-attendance, is liable to the defendant in the sum of one hundred dollars, which may be recovered in a civil action.

Failure to appear. Cr. P., 543.

SEC. 8154. When a witness has entered into an undertaking to appear, upon his failure to do so the undertaking is forfeited in the same manner as undertakings of bail.

Temporary removal of imprisoned witnesses. N. S.

SEC. 8155. When the testimony of a material witness for the people is required in a criminal action before a Court of Record of this Territory, and such witness is a prisoner in the Territorial prison or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by a Judge thereof; but in case the prison or jail is out of the county in which the application is made, such order can only be made upon the affidavit of the District Attorney or other person on behalf of the people showing that the testimony is material and necessary; and even then the granting of the order is in the discretion of the court or Judge. The order must be executed by the Sheriff of the county in which it is made, whose duty it is to bring the prisoner before the proper court, to safely keep him, and when he is no longer required as a witness, to return him to the prison or jail whence he was taken; the expense of executing such order must be paid by the county in which the order is made.

CHAPTER IV.

EXAMINATION OF WITNESSES CONDITIONALLY.

SECTION
8160. Witnesses to be examined conditionally for the defendant, as provided in this chapter.
8161. In what cases defendant may apply for the order.
8162. Application, how made.
8163. Application, to whom made.
8164. Order, when granted and what to contain.
8165. On proof of service, if district attorney be absent, examination must proceed.
SECTION
8166. If facts on which order was founded be disproved, examination not to proceed.
8167. Attendance of witness, how enforced.
8168. Testimony, how taken and authenticated.
8169. Deposition to be transmitted to clerk.
8170. When may be read in evidence. Subject to objections, etc.
8171. Witness in prison.

SECTION 8160. When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment, have witnesses examined conditionally, on his behalf, as prescribed in this chapter, and not otherwise.

Witnesses to be examined conditionally. Cr. P., 545.

SEC. 8161. When a material witness for the defendant is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

Defendant may apply for order, when. Cr. P., 546.

SEC. 8162. The application must be made upon affidavit, stating:

Application, how made. Cr. P., 549.

1. The nature of the offense charged;
2. The state of the proceedings in the action;
3. The name and residence of the witness, and that his testimony is material to the defense of the action;
4. That the witness is about to leave the Territory, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

SEC. 8163. The application may be made to the court during the term thereof, or to the Judge in vacation, and must be upon three days notice to the District Attorney.

Application, to whom made. Cr. P., 550.

SEC. 8164. If the court or Judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the District Attorney, within a specified time before that fixed for the examination.

Order. Cr. P., 551.

SEC. 8165. The order must direct that the examination be taken before a magistrate named therein, and on proof being furnished to such magistrate, of service upon the District Attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed.

Order, absence of district attorney. N. S.

SEC. 8166. If the District Attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the Territory, or is not sick and infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

When examination not to proceed. N. S.

SEC. 8167. The attendance of the witness may be enforced by a subpœna, issued by the magistrate before whom the examination is to be taken.

Attendance of witness. N. S.

Testimony, how taken.
N. S.

SEC. 8168. The testimony given by the witness must be reduced to writing and authenticated in the same manner as the testimony of a witness taken in support of an information.

Deposition.
N. S.

SEC. 8169. The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending or may come for trial.

When may be read in evidence, etc.
Cr. P. 565.

SEC. 8170. The deposition, or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Territory. Upon reading the depositions in evidence, the same objections may be taken to a question or answer contained therein, as if the witness had been examined orally in court.

N. S.

Witness in prison.

SEC. 8171. When a material witness for a defendant, under a criminal charge, is a prisoner in the Territorial prison, or in the county jail of a county, other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the same manner provided in the case of a witness who is sick, and the provisions of this Chapter, so far as applicable, govern in the application for, and in the taking and use of, such deposition. Such depositions may be taken before any magistrate or notary public of the county in which the jail or prison is situated. Every officer, before whom testimony is taken by virtue hereof, shall have authority to administer, and must administer, an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth.

CHAPTER V.

EXAMINATION OF WITNESSES ON COMMISSION.

SECTION
8176. Witness residing out of the Territory, when to be examined.
8177. When defendant may apply for an order to examine, etc.
8178. Commission defined.
8179. Application made on affidavit.
8180. Application, to whom made.
8181. Order for commission, when granted and stay of proceedings.
8182. Interrogations, how settled and allowed.
8183. Direction as to the return of the commission.

SECTION
8184. Commission, how executed. Copy of this section to be annexed to commission.
8185. Commission, how returned, when delivered to an agent for that purpose.
8186. Same.
8187. When and how filed.
8188. Commission and return to be open for inspection. Copies, etc.
8189. Depositions to be read in evidence. Objections thereto, etc.

Witness residing out of Territory
Cr. P., 545.

SECTION 8176. When an issue of fact is joined upon an indictment, the defendant may have any material witness, residing out of the Territory, examined in his behalf, as prescribed in this chapter, and not otherwise.

Defendant may apply for an order.
N. S.

SEC. 8177. When a material witness for the defendant resides out of the Territory, the defendant may apply for an order that the witness be examined on a commission.

Commission defined.
Cr. P., 547

SEC. 8178. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath or interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.

Application, how made. Cr. P., 549.

SEC. 8179. The application must be made upon affidavit, stating:

1. The nature of the offense charged;
2. The state of the proceedings in the action, and that an issue of fact has been joined therein;
3. The name of the witness, and that his testimony is material to the defense of the action;
4. That the witness resides out of the Territory.

Application, to whom made. Cr. P., 550.

SEC. 8180. The application may be made to the court during the term, or to the Judge in vacation, and must be upon three days notice to the District Attorney.

Order for commission. Cr. P., 551, 552.

SEC. 8181. If the court or Judge to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witnesses is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony, and the court or Judge may insert in the order a direction that the trial of the indictment be stayed for a specified time, reasonably sufficient for the execution and return of the commission.

Interrogations, how settled and allowed. Cr. P., 553, 554, 555, 556.

SEC. 8182. When the commission is ordered, the defendant must serve upon the District Attorney, without delay, a copy of the interrogatories to be annexed thereto, with two days' notice of the time at which they will be presented to the court or Judge. The District Attorney may in like manner serve upon the defendant or his counsel, cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or Judge, according to the notice given, the court or Judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his allowance and annex them to the commission.

Direction as to return of commission. Cr. P., 557.

SEC. 8183. Unless the parties otherwise consent, by an indorsement upon the commission, the court or Judge must indorse thereon a direction as to the manner in which it must be returned, and may, in his discretion, direct that it be returned by mail or otherwise, addressed to the Clerk of the Court in which the action is pending, designating his name and the place where his office is kept.

Commission, how executed. Cr. P., 558, 559.

SEC. 8184. The commissioner, unless otherwise specially directed, may execute the commission as follows:

1. He must publicly administer an oath to the witness, that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth;
2. He must cause the examination of the witness to be reduced to writing, and subscribed by him;
3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth.
4. If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated.
5. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner;

6. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition, with the papers and documents proved by the witness, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon;

7. If there is a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post office. If any other direction is made by the written consent of the parties, or by the court or Judge, on the commission, as to its return, he must comply with the direction. A copy of this section must be annexed to the commission.

Commission delivered to agent.
Cr. P., 560.

SEC. 8185. If the commission and return is delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed or to the Judge of the Court in which the indictment is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it.

Same.
Cr. P., 561.

SEC. 8186. If the agent is dead, or from sickness or other casualty unable personally to deliver the commission and return, as prescribed in the last section, it may be received by the clerk or Judge from any other person, upon his affidavit that he received it from the agent, that the agent is dead, or from sickness or other casualty, unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner.

When and how filed.
Cr. P., 562, 563.

SEC. 8187. The clerk or Judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the Clerk of the Court in which the indictment is pending.

If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post office, and open and file it in his office, where it must remain, unless otherwise directed by the court or Judge.

Commission and return open for inspection copies.
Cr P., 564

SEC. 8188. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or any part thereof, on payment of his fees.

Depositions, to be read in evidence. Objections thereto
Cr P., 565

SEC. 8189. The depositions taken under the commission may be read in evidenae by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court.

CHAPTER VI.

INQUIRY INTO THE INSANITY OF THE DEFENDANT.

SECTION
8194. An insane person cannot be tried, sentenced, or punished for a public offense.
8195. When doubt arises as to sanity of the defendant, how determined. Stay of proceedings on.
8196. Order of the trial of the question of insanity. Charge of the court.
SECTION
8197. Verdict of the jury and proceedings thereon.
8198. If defendant is committed, it exonerates his bail, etc.
8199. Defendant detained in asylum until he becomes sane. Notice given to whom.
8200. Expense of sending, etc., defendant to asylum, where chargeable.

Insane persons. Cr. P., 566.

SECTION 8194. A person cannot be tried, adjudged to punishment, or punished for a public offense, while he is insane.

Sanity, doubts of. Cr. P., 567, 568.

SEC. 8195. When an indictment is called for trial, if a doubt arises as to the sanity of the defendant, the court must order the question to be submitted to a jury; where such doubt arises on the defendant being brought up for judgment on conviction, the court must order a jury to be summoned from the list of jurors selected by the commissioners for the year, to inquire into the fact; and the trial of the indictment or the pronouncing of the judgment must be suspended until the question of insanity is determined by the verdict of the jury.

Order of trial on questions of insanity. Cr. P., 569, 570.

SEC. 8196. The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity;
2. The counsel for the people may then open their case and offer evidence in support thereof;
3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause;
4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;
5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases the argument may be restricted to one counsel on each side;
6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

Charge of court.

Verdict of jury proceedings. Cr. P., 571, 572.

SEC. 8197. If the jury find the defendant sane, the trial of the indictment must proceed, or judgment may be pronounced, as the case may be. If the jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court, if it deems his discharge dangerous to the public peace or safety, may order that he be in the meantime committed by the Sheriff to the Territorial insane asylum, and that upon his becoming sane he be redelivered to the sheriff.

When bail exonerated. Cr. P., 573.

SEC. 8198. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person, authorized to receive the property of the defendant, to a return of any money he may have deposited instead of bail.

When defendant becomes sane, etc. Cr. P., 574.

SEC. 8199. If the defendant is received into the asylum, he must be detained there until he becomes sane. When he becomes sane, the superintendent must give notice of that fact to the sheriff and District Attorney of the county. The sheriff must thereupon, without delay, take the defendant from the asylum, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.

Expenses, etc., where chargeable. Cr. P., 575.

SEC. 8200. The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county bound to provide for and maintain him elsewhere.

CHAPTER VII.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF COURT.

SECTION
8205. Certain offenses for which the party injured has a civil action may be compromised.

SECTION
8206. Compromise to be by permission of court.
8207. No public offense to be compromised except as herein provided.

Compromising certain offenses. Cr. P., 661.

SECTION 8205. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office;
2. Riotously;
3. With an intent to commit a felony.

To be by permission of court. Cr. P., 662, 663

SEC. 8206. If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

No other compromise lawful. Cr. P., 664.

SEC. 8207. No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this Chapter.

CHAPTER VIII.

Dismissal of the Action for want of Prosecution or Otherwise.

SECTION
8212. When action may be dismissed.
8213. Court may order action to be continued and discharge defendant from custody, when and how.
8214. If action dismissed, defendant to be discharged.
SECTION
8215. Court may order action dismissed; when.
8216. Nolle prosequi abolished.
8217. Dismissal a bar in misdemeanor, but not in felony.

SECTION 8212. The Court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

When action may be dismissed. Cr P., 576, 577.

1. When a person has been held to answer for a public offense, if an indictment is not found against him at the next term of the Court at which he is held to answer;

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial at the next term of the Court in which the indictment is triable, after it is found.

SEC. 8213. If the defendant is not indicted or tried, as provided in the last section, and sufficient reason therefor is shown, the Court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to which the action is continued.

Action continued and defendant discharged on his own recognizance. Cr. P., 578.

SEC. 8214. If the Court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

When defendant discharged. Cr. P., 579.

SEC. 8215. The Court may, either of its own motion or upon the application of the District Attorney, and in futherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

Dismissal of action. Cr. P., 580.

SEC. 8216. The entry of a nolle prosequi is abolished, and neither the Attorney General nor the District Attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last section.

Nolle prosequi abolished. Cr. P., 581.

SEC. 8217. An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor; but it is not a bar if the offense is a felony.

Dismissal, when a bar. Cr. P., 582.

CHAPTER IX.

Proceedings Against Corporations.

SECTION.
8222. Summons upon information, etc., against; by whom issued and when returnable.
8223. Form of summons.
8224. When and how served.
8225. Examination of charge.
SECTION
8226. Certificate of magistrate, and return thereof with depositions.
8227. If magistrate certify that there is sufficient cause, grand jury to investigate.
8228. Appearance and plea.
8229. Fine on conviction, how collected.

SECTION 8222. Upon an information or presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corpor-

Summons upon information. Cr. P., 583.

ation to appear before him at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

Form of summons. Cr. P., 584.

SEC. 8223. The summons must be substantially in the following form:

County of (as the case may be):

The Territory of Idaho to the (naming the corporation);

You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A. B. (or the presentment of the Grand Jury of the county, as the case may be), for (designating the offense generally).

Dated at the city or precinct of————, this——day of ————, eighteen————.

G. H., Justice of the Peace.

(Or as the case may be.)

When and how served. Cr. P., 585.

SEC. 8224. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier or managing agent thereof.

Examination of charge. Cr. P., 586.

SEC. 8225. At the appointed time in the summons the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

Certificate of magistrate. Cr. P., 587.

SEC. 8226. After hearing the proofs, the magistrate must certify upon the deposition, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate to the Clerk of the District Court of the county.

When jury to investigate, etc. Cr. P., 588.

SEC. 8227. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the Grand Jury may proceed thereon as in case of a natural person held to answer.

Appearance and plea. Cr. P., 589.

SEC. 8228. If an indictment is found, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

Fine on conviction. Cr. P., 590.

SEC. 8229. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it by the Sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

CHAPTER X.

ENTITLING AFFIDAVITS.

SECTION
8234. Affidavits defectively entitled, valid.

Affidavit defectively entitled, valid. Cr P., 591.

SECTION 8234. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment or appeal in which it is made.

CHAPTER XI.

ERRORS AND MISTAKES.

SECTION
8236. When not material.

SECTION 8236. Neither a departure from the form or mode prescribed by this Code in respect to any pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice in respect to a substantial right.

When not material. Cr. P., 592.

CHAPTER XII.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

SECTION
8238. When it comes into the custody of the peace officer he must hold it subject to the order of the magistrate.
8239. Order for its delivery to owner.
8240. When it comes into the custody of the magistrate he must deliver it to owner.
SECTION
8241. Court in which trial is had may order its delivery.
8242. If not claimed in six months to be delivered to County Treasurer.
8243. Receipt by officers for money, etc., taken from a person arrested for a public offense.

SECTION 8238. When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Disposal of stolen property. Cr. P., 593

SEC. 8239. On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Order for delivery. Cr. P., 594. Cr., 66.

The order entitles the owner to demand and receive the property.

SEC. 8240. If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

Magistrate must deliver, when. Cr. P., 595.

SEC. 8241. If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

Court may order delivery. Cr. P., 596.

SEC. 8242. If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the County Treasurer, by whom it must be sold and the proceeds paid into the County Treasury.

When delivered to county treasurer. Cr. P., 597.

SEC. 8243. When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must, at the time give duplicate receipts therefor, specifying practically the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the Clerk of the Court to which the depositions and statement are to be sent.

Receipt by officers, etc Cr. P., 598.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS, AND PARDONS.

SECTION.
8248. Power of Governor to grant reprieves, commutations, and pardons.
8249. Governor to communicate to the Legislature reprieves, etc.
8250. Report of case, how and from whom required.
SECTION
8251. Notice to District Attorney of application for pardon.
8252. Publication of notice.
8253. When preceding sections are not applicable.

Power of Governor to grant reprieves, commutations and pardons
N. S.

SECTION 8248. The power of the Governor to grant pardons and reprieves, and remit fines and forfeitures for offenses against the laws of the Territory, is conferred by section one thousand eight hundred and forty-one of the Revised Statutes of the United States; and in compliance therewith he may grant pardons and reprieves, and commutations after conviction, upon such conditions and with such restrictions and limitations as he may think proper.

Reprieves, etc., to be communicated to Legislature
N. S.

SEC. 8249. He must, at the beginning of every session, communicate to the Legislature each case of reprieve, commutation, or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, and the reasons for granting the same.

Report of case
N. S.

SEC. 8250. When an application is made to the Governor for a pardon, he may require the judge of the Court before which the conviction was had, or the District Attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing the pardon.

Notice to district attorney.
N. S.

SEC. 8251. At least ten days before the Governor acts upon an application for a pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the District Attorney of the county where the conviction was had, and proof, by affidavit, of the service must be presented to the Governor.

Publication of notice.
N. S.

SEC. 8252. Unless dispensed with by the Governor, a copy of the notice must also be published for thirty days from the first publication, in a paper in the county in which the conviction was had, or if no paper is published in the county, in a paper published at the capital of the Territory.

Sections not applicable
N. S.

SEC. 8253. The provisions of the two preceding sections are not applicable:

1. When there is imminent danger of the death of the person convicted or imprisoned;
2. When the term of imprisonment of the applicant is within ten days of its expiration.

TITLE XI.

OF PROCEEDINGS IN PROBATE AND JUSTICES' COURTS AND APPEALS TO THE DISTRICT COURT.

CHAPTER I.

PROCEEDINGS IN PROBATE AND JUSTICES' COURTS.

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8284. Issue, how tried.
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SECTION
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8312. Defendant may be admitted to bail.
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Proceedings, how commenced. Cr. P., 599.

SECTION 8280. All proceedings and actions before Probate and Justices' Courts for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

When warrant must issue. Cr. P., 601.

SEC. 8281. If the Probate Judge or Justice of the Peace is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

County of———

The Territory of Idaho to any Sheriff, Constable, Marshal, or Policeman, in this Territory:

Complaint, upon oath, having been this day made before me———(Justice of the Peace or Probate Judge, as the case may be), by C. D., that the offense of———(designating it generally), has been committed, and accusing E. F. thereof; you are therefore commanded forthwith to arrest the above named E. F. and bring him before me forthwith at———(naming the place).

Witness my hand at——, this——day of——, A. D.———.

A. B.

(And if in Probate Court, seal of court).

Minutes, how kept. Cr. P., 604.

SEC. 8282. A docket must be kept by the Justice of the Peace, or by the Clerk of the Probate Court, in which must be entered each action and the proceedings of the court therein.

Plea, how put in. Cr. P , 602.

SEC. 8283. The defendant may make the same plea as upon an indictment. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appears to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the Grand Jury.

Issue, how tried. Cr. P., 602, 603.

SEC. 8284. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case.

Change of venue, when granted. N. S.

SEC. 8285. If the action or proceeding is in a Probate or Justice's Court, a change of the place of trial may be had at any time before the trial commences:

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the Probate Judge or Justice about to try the case, by reason of the prejudice or bias of such Judge or Justice, the cause must be transferred to a Justice of the same or an adjoining Precinct;

2. When in a Justice's Court it appears from affidavits that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the precinct, the cause must be transferred to a justice of a precinct where the same prejudice does not exist.

Change of venue, etc. N. S.

SEC. 8286. When a change of the place of trial is ordered, the Judge or Justice must transmit to the Justice before whom the trial is to be had, all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the Justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

Postponement of trial. Cr. P., 602.

SEC. 8287. Before the commencement of a trial in any of the courts mentioned in this chapter, either party may, upon good cause shown, have a reasonable postponement thereof.

Defendant to be present Cr. P., 603.

SEC. 8288. The defendant must be personally present before the trial can proceed.

Jury trial, how waived. Cr. P., 603.

SEC. 8289. A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in Title III, Part I of the Code of Civil Procedure.

Challanges. Cr. P., 605, 606.

SEC. 8290. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, for cause, as on the trial of an indictment for a misdemeanor; but the challenge must in all cases be tried by the court; the defendant is entitled to four peremptory challenges and the prosecution to three.

Oath of jurors Cr. P., 608

SEC. 8291. The court must administer to the jury the following oath: "You do swear that you will well and truly try this issue between the Territory of Idaho and A. B., the defendant, and a true verdict render according to the evidence."

SEC. 8292. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public and in the presence of the defendant.

Trial, how conducted. Cr. P., 609.

SEC. 8293. The court must decide all questions of law which may arise in the course of the trial, but can give no charge to the jury.

Court to decide questions of law. Cr. P., 609.

SEC. 8294. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself unless by order of the court, or to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed or when ordered by the court."

Jury may decide, where.

Oath of officer, etc. Cr. P., 610.

SEC. 8295. The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter or cause it to be entered, in the minutes.

Verdict of jury. Cr. P., 611.

SEC. 8296. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

Defendants tried together. Cr. P., 612.

SEC. 8297. The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict unless for good cause, the court sooner discharges them.

Jury, when to be discharged. Cr. P., 612.

SEC. 8298. If the jury is discharged as provided in the last section, the court may proceed again to the trial in the same manner as upon the first trial; and so on until a verdict is rendered.

If discharged, defendant may be again tried. Cr. P., 613.

SEC. 8299. When the defendant pleads guilty, or is convicted either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be.

Proceedings on plea of guilty. Cr. P., 614.

SEC. 8300. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, in the proportion of one day's imprisonment for every two dollars of the fine.

Judgment may direct imprisonment. Cr. P., 615.

SEC. 8301. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

Defendant on acquittal to be discharged. Cr. P., 616.

SEC. 8302. If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced, in all respects, in the same manner as a judgment rendered in a civil action.

Judgment against prosecutor for costs. Cr. P., 617.

Judgment rendered, when. Cr. P., 619.

SEC. 8303. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, and must hold the defendant to bail to appear for judgment, and in default of bail he must be committed.

New trial or arrest of judgment. Cr. P., 620.

SEC. 8304. At any time before judgment, defendant may move for a new trial or in arrest of judgment.

New trial, grounds of. Cr. P., 621.

SEC. 8305. A new trial may be granted in the following cases:

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had;
2. When the jury has received any evidence out of court;
3. When the jury has separated without leave of the court, after having retired to deliberate upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case;
4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors;
5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial;
6. When the verdict is contrary to law or evidence;
7. When new evidence is discovered, material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing, the affidavits of the witnesses by whom such newly discovered evidence is expected to be given.

Motion in arrest of judgment. Cr. P., 622.

SEC. 8306. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

Judgment entered in minutes. Cr. P., 623.

SEC. 8307. If the judgment is not arrested, or a new trial granted, judgment must be pronounced at the time appointed and entered in the minutes of the Court.

When defendant discharged. Cr. P., 624.

SEC. 8308. If judgment of acquittal is given, on judgment imposing a fine only, without imprisonment for nonpayment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

Judgment of imprisonment. Cr. P., 625.

SEC. 8309. When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the Sheriff, Marshal, or other officer, which is a sufficient warrant for its execution.

Imprisoning defendant, when. N. S.

SEC. 8310. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

Defendant discharged, when. Cr P., 626, 627.

SEC. 8311. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause.

Admittance to bail. Cr. P., 628.

SEC. 8312. The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this Code relative to bail are applicable to bail in Probate and Justices' Courts.

Subpœnas.

SEC. 8313. The Justice or Judge of either of the Courts mentioned in this Chapter may issue subpœnas for witnesses and punish disobedience thereof, as provided in Chapter III, of Title X, of Part II of this Code.

Entitling affidavits.

SEC. 8314. The provisions in respect to entering affidavits, are applicable to proceedings in the Courts mentioned in this Chapter.

CHAPTER II.

APPEALS TO DISTRICT COURT.

Act Jan. 15, 1875.
Cr. Prac., 465.

SECTION
8320. Appeals.
8321. How taken. Notice of appeal.
8322. Undertaking of witnesses to appear on appeal.
8323. Papers transmitted to the District Court.

SECTION
8324. Bail pending appeal.
8325. Trial *de nova* in the District Court.
8326. Casts.
8327. Judgment against sureties. Execution must be issued therein.

Appeals.

SECTION 8320. The defendant may appeal to the District Court of the county from any judgment of conviction rendered in a criminal action by a Probate or Justice's Court.

How taken, notice of appeal.

SEC. 8321. A defendant intending to appeal must give notice of his intention to do so at the time of the trial or rendition of the judgment, and must within ten days after the rendition and entry of the judgment, file with the Judge or Justice of the court wherein the conviction was had, and serve on the District Attorney of the county, a notice of appeal entitled in the action setting forth the character of the judgment and the intention of the defendant to appeal therefrom to the District Court.

Undertaking of witnesses to appear on appeal.

SEC. 8322. When notice of intention to appeal is given by the defendant as provided in the last section, the Judge or Justice may take from each of the material witnesses examined before him on the part of the people, a written undertaking with or without sureties, to the effect that he will appear and testify in the District Court upon the appeal, or that he will forfeit the sum of five hundred dollars as provided in case of commitment upon preliminary examination, or if the witness is unable to procure sureties he may be conditionally examined as there provided.

Papers transmitted to district court.

SEC. 8323. When an appeal is taken, the Judge or Justice must immediately transmit to the Clerk of the District Court of the county, the complaint, notice of appeal, the depositions of any witnesses examined conditionally as provided in the last section, and any recognizance entered into by the defendant or any witness.

Bail pending appeal.

SEC. 8324. The party appealing may at any time thereafter, if he desires to be released from custody during the pendency of the appeal, or desires a stay of proceedings under the judgment until the appeal be disposed of, enter into a recognizance, with two sufficient sureties to be approved by the Judge or Justice, in an amount to be fixed by the Judge or Justice, but not exceeding five hundred dollars in any case, for the payment of any judgment, fine and costs that may be awarded against him on appeal, and that he will faithfully prosecute the same and render himself in execution of any judgment or order rendered or entered against him in District Court.

Trial *de novo* in district court.

SEC. 8325. The Clerk of the District Court must file the papers received and enter the action on the calendar in its order with other criminal cases, and the same must be tried anew in the District Court at the next term thereof, unless for good cause the same be continued.

Costs.

SEC. 8326. The costs in both courts shall abide the event of the trial in the District Court.

Judgment against sureties, execution must be issued.

SEC. 8327. If upon trial in the District Court the defendant is convicted, judgment must be rendered against the defendant and his sureties for the costs in both courts, and for any fine imposed by the District Court; and if such fine and costs be not paid, execution must be issued thereon against the defendant and his sureties; but the sureties are not liable on any such judgment or execution beyond the amount of their undertaking; if the defendant fails to appear and prosecute his appeal, judgment must be entered by the District Court against the defendant and his sureties in the amount of the undertaking.

TITLE XII.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

CHAPTER I.

OF WRIT OF HABEAS CORPUS.

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8343. Writ must be granted without delay.
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SECTION 8340. Every person unlawfully committed, detained, confined, or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

Who may prosecute writ. 8 ses., 468, Sec. 1.

SEC. 8341. Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify:

Application for, how made. 8 ses., 468, sec. 2.

1. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties if they are known, or describing them if they are not known;

2. If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists;

3. The petition must be verified by the oath or affirmation of the party making the application.

SEC. 8342. The writ of habeas corpus may be granted:

By whom issued, before whom returnable. Id., sec. 3.

1. By the Supreme Court, upon petition on behalf of any person restrained of his liberty in this Territory. When so issued, it may be made returnable before the court, or before any District Court, or any Judge thereof;

2. By the District Courts, or a Judge thereof, upon petition on behalf of any person restrained of his liberty in their respective districts.

SEC. 8343. Any court or Judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay.

Writ to be immediately granted. Id., sec. 4.

SEC. 8344. The writ must be directed to the person having custody of, or restraining the person on whose behalf

Writ, contents of. Id., sec. 5.

the application is made, and must command him to have the body of such person before the court or Judge, before whom the writ is returnable, at a time and place therein specified.

How served. Id., Sec. 6.

SEC. 8345. If the writ is directed to the Sheriff or other ministerial officer of the court, out of which it issues, it must be delivered by the clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person, it must be delivered to the Sheriff, and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed cannot be found, or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside, either of his dwelling house or of the place where the party is confined or under restraint.

Id., Sec. 7, 8.

Disobedience to writ, proceedings. Id., Sec. 9.

SEC. 8346. If the person to whom the writ is directed, refuses, after service, to obey the same, the court or Judge, upon affidavit, must issue an attachment against such person, directed to the Sheriff or Coroner, or an elisor, commanding him to forthwith to apprehend such person and bring him immediately before such court or Judge; and upon being so brought, he must be committed to the jail of the county until he makes due return to such writ, or is otherwise legally discharged.

Return what to contain. Id., Sec. 10.

SEC. 8347. The person upon whom the writ is served must state in his return, plainly and unequivocally:

1. Whether he has or has not the party in his custody, or under his power or restraint;

2. If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint;

3. If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the court or Judge on the hearing of such return;

4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place;

5. The return must be signed by the person making the same, and except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.

Body, when produced. Id., Sec. 11.

SEC. 8348. The person to whom the writ is directed, if it is served, must bring the body of the party in his custody or under his restraint, according to the command of the writ, except in the cases specified in the next section.

When hearing may proceed without body. Id., Secs. 12, 13.

SEC. 8349. When from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the court or Judge, the person in whose custody or power he is, may state that fact in his return to the writ, verifying the same by affidavit. If the court or

Judge is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the court or Judge may proceed to decide on such return, and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

Hearing on return. Id, sec. 14.

SEC. 8350. The court or Judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

Proceedings on hearing. Id., secs. 15, 16, 17.

SEC. 8351. The party brought before the court or Judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The court or Judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and has full power and authority to require and compel the attendance of witnesses, by process of subpœna and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

When court may discharge party. Id., sec. 18.

SEC. 8352. If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such court or Judge must discharge such party from the custody or restraint under which he is held.

When to remand party. Id., Sec. 19.

SEC. 8353. The Court or Judge, if the time during which such party may be legally detained in custody has not expired, must remand such party, if it appears that he is detained in custody:

1. By virtue of process issued by any Court or Judge of the United States, in a case where such Court or Judge has exclusive jurisdiction; or
2. By virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree.

Grounds of discharge in certain cases. Id., Sec. 20

SEC. 8354. If it appears on the return of the writ that the prisoner is in custody by virtue of process from any Court of this Territory, or Judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last section:

1. When the jurisdiction of such court or officer has been exceeded;
2. When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge;
3. When the process is defective in some matter of substance required by law, rendering such process void;
4. When the process, though in proper form, has been issued in a case not allowed by law;
5. When the person having the custody of the prisoner is not the person allowed by law to detain him;
6. Where the process is not authorized by any order, judgment, or decree of any court, nor by any provision of law;

7. Where a party has been committed on a criminal charge without reasonable or probable cause.

Form of warrant, defect in.
Id., sec. 21.

SEC. 8355. If any person is committed to prison or is in custody of any officer on any criminal charge by virtue of any warrant of commitment of a Probate Judge or Justice of the Peace, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment.

Examination of witnesses, powers of court.
Id., sec. 22.

SEC. 8356. If it appears to the court or Judge by affidavit or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the court or Judge, that the party is guilty of a criminal offense, or ought not to be discharged, such court or Judge, although the charge is defective or unsubstantially set forth in such process or warrant of commitment, must cause the complainant or other necessary witnesses to be subpœnaed to attend at such time as ordered, to testify before the court or Judge; and upon the examination he may discharge such prisoner, let him to bail if the offense be bailable, or recommit him to custody as may be just and legal.

Writ for purpose of bail.
Id., Sec 23.

SEC. 8357. When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

Judge may take bail.
Id., Sec. 24.

SEC. 8358. Any Judge before whom a person has been committed on a criminal charge, may be brought on a writ of habeas corpus, if the same is bailable, may take an undertaking of bail from such person as in other cases, and file the same in the proper court.

Judge, when to remand.
Id., Sec. 25.

SEC. 8359. If a party brought before the court or Judge on the return of the writ is not entitled to his discharge, and is not bailed, where such bail is allowable, the court or Judge must remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, is legally entitled thereto.

Person in illegal custody.
Id., Sec. 26

SEC. 8360. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the Judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Disposition of party, pending proceedings.
Id., Sec. 27.

SEC. 8361. Until judgment is given on the return, the court or Judge before whom any party may be brought on such writ may commit him to the custody of the Sheriff of the county, or place him in such care or under such custody as his age or circumstances may require.

Defect of form, etc.
Id , Sec. 28.

SEC. 8362. No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or Judge before whom he is to be brought.

Imprisonment after discharge, etc.
Id., Sec. 29.

SEC. 8363. No person who has been discharged by the order of the court or Judge upon habeas corpus can be again imprisoned, restrained or kept in custody for the same cause except in the following cases:

1. If he has been discharged from custody on a criminal

charge, and is afterwards committed for the same offense by legal order or process;

2. If, after a discharge for defect of proof, or for any defect of the process, warrant or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

SEC. 8364. When it appears to any court or Judge authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the court or Judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court or Judge may cause a warrant to be issued, reciting the facts and directed to the Sheriff, Coroner or Constable of the county commanding such officer to take such person thus held in custody, confinement or restraint, and forthwith bring him before such court or Judge to be dealt with according to law.

Warrant to issue instead of writ, when. Id., Sec. 30.

SEC. 8365. The court or Judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

Warrant may include officer. Id., Sec. 31.

SEC. 8366. The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or Judge who directed the issuing of such warrant.

Warrant, how executed. Id., sec. 32.

SEC. 8367. The person alleged to have such party under illegal confinement or restraint may make return to such warrant as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus.

Return and hearing, etc. Id., Sec, 33.

SEC. 8368. If such party is held under illegal restraint or custody, he must be discharged; and if not, he must be restored to the care or custody of the person entitled thereto.

Party may be discharged or remanded. Id., Sec. 34.

SEC. 8369. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

Writ and process, when issued and served. Id., Sec. 35.

SEC. 8370. All writs, warrants, process, and subpœnas authorized by the provisions of this chapter must be issued by the Clerk of the Court, and, except subpœnas, must be sealed with the seal of such court, and served and returned forthwith, unless the court or Judge shall specify a particular time for any such return.

By whom issued, etc. Id., Sec. 36.

SEC. 8371. All such writs and process when made returnable before a Judge, must be returned before him at the county seat, and there heard and determined.

Where returnable. N. S.

SEC. 8372. If any Judge after a proper application is made, refuses to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed, refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by action in any court of competent jurisdiction.

Damages. Id., Sec. 37.

CHAPTER II.

OF CORONERS' INQUESTS AND DUTIES OF CORONERS.

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8381. Verdict of jury in writing.
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Coroner to summon jury, when. 8 ses., 567, Sec. 4.

SECTION 8377. When a Coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed, if it has been interred, and summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of deceased is, to inquire into the cause of the death.

Jurors to be sworn. Id., Sec. 6.

SEC. 8378. When six or more of the jurors attend, they must be sworn by the Coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances attending his death; and to render a true verdict thereon, according to the evidence offered them, or arising from the inspection of the body.

Witnesses to be summoned. Id., Sec. 7.

SEC. 8379. Coroners may issue subpœnas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who, in their opinion, or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

Witnesses compelled to attend. Id., Sec. 8.

SEC. 8380. A witness served with a subpœna may be compelled to attend and testify, or punished by the Coroner for disobedience, in like manner as upon a subpœna issued by a Justice of the Peace.

Verdict of jury, contents of. Id., Sec. 9.

SEC. 8381. After inspecting the body and hearing the testimony, the jury must render their verdict and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof.

Testimony in writing. Id., Sec. 10.

SEC. 8382. The testimony of the witnesses examined before the Coroners' jury must be reduced to writing by the Coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the Clerk of the District Court of the County.

Exception. Id., Sec. 11.

SEC. 8383. If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the Coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the Clerk of the District Court of the county.

SEC. 8384. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act is ascertained by inquisition, and is not in custody, the Coroner must issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

Coroner to issue warrant. Id., Sec. 12.

SEC. 8385. The Coroner's warrant must be in substantially the following form:

Form of warrant. Id., Sec. 13.

County of————.

The Territory of Idaho, to any Sheriff, Constable, Marshal, or Policeman in this Territory:

An inquisition having been this day found by a Coroner's jury before me, stating that A. B. has come to his death by the act of C. D., by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded forthwith to arrest the above named C. D., and take him before the nearest or most accessible magistrate in this county.

Given under my hand this———day of—————, A.D. eighteen————.
E. F.,
Coroner of the County of———.

SEC. 8386. The Coroner's warrant may be served in any county, and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information before a magistrate; when served in another county it need not be indorsed by a magistrate of that county.

How served. Id., Sec. 14.

CHAPTER III.

OF SEARCH WARRANTS.

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8390. Search warrant defined.
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8392. It cannot be issued but upon probable cause.
8393. Magistrates must examine, on oath, complainant, etc.
8394. Depositions, what to contain.
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8402. Officer to give receipt for property taken.
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8405. Copy of inventory, to whom delivered.
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8407. Property, when to be restored to person from whom it was taken.
8408. Depositions, warrant, etc., to be returned by magistrate to county court.
8409. When magistrate may direct defendant to be searched in his presence.

SECTION 8390. A search warrant is an order in writing, in the name of the Territory of Idaho, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

Search warrant defined. Cr. P., 630.

SEC. 8391. It may be issued upon either of the following grounds:

Upon what grounds it may issue. Cr. P., 631.

1. When the property was stolen or embezzled; in which case it may be taken, on the warrant, from any place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be;

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from

the place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be;

3. When it is in the possession of any person with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

Probable cause on affidavit. Cr. P., 632.

SEC. 8392. A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

Magistrates, examine complainant. Cr. P., 633.

SEC. 8393. The magistrate must, before issuing the warrant, examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Depositions, contents of. Cr. P., 634.

SEC. 8394. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

When to issue warrant. Cr. P., 635.

SEC. 8395. If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

Form of warrant. Cr. P., 636.

SEC. 8396. The warrant must be in substantially the following form:

County of ————:

The Territory of Idaho to any Sheriff, Constable, Marshal, or Policeman in the county of ————: Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application, or, if the affidavit be not positive, that there is probable cause for believing that—stating the ground of the application in the same manner), you are therefore commanded, in the day time (or at any time of the day or night, as the case may be) to make immediate search on the person of C. D. (or in the house situated ———describing it or any other place to be searched, with reasonable particularity, as the case may be) for the ——— following property: (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at ——— (stating the place).

Given under my hand, and dated this ——— day of ———, A. D. eighteen———. E. T., Justice of the Peace (or as the case may be).

By whom served. Cr. P., 637.

SEC. 8397. A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

Officer may break open, etc. Cr. P., 639.

SEC. 8398. The officer may break open any outer or inner door or window of a house, or any part of a house, or any thing therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

SEC. 8399. He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

Liberating person. Cr. P., 638.

SEC. 8400. The magistrate must insert a direction in the warrant that it be served in the day time unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

Warrant served in the night. Cr. P., 640.

SEC. 8401. A search warrant must be executed and returned to the magistrate who issued it, within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

Time of executing warrant. Cr. P., 641.

SEC. 8402. When the officer takes property under the warrant, he must give a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or, in the absence of any person, he must leave it in the place where he found the property.

Officer to give receipt. Cr. P. 642.

SEC. 8403. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in Chapter XII, of Title X, of Part II of this Code. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section 8391, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property taken is triable.

Property. how disposed of. Cr. P., 643.

SEC. 8404. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant; if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Return of warrant. etc. Cr. P., 644.

SEC. 8405. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

Copy of inventory. Cr. P., 645.

SEC. 8406. If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated by the magistrate.

Proceedings. Cr. P., 646, 647.

SEC. 8407. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

Property, when restored, etc. Cr. P., 648.

SEC. 8408. The magistrate must annex together the depositions, the search warrant and return, and the inventory, and return them to the next term of the court having power

Deposition, etc., to be returned. Cr. P., 649.

to inquire into the offenses in respect to which the search warrant was issued, at or before its opening on the first day.

Defendant to be searched. Cr. P., 650.

SEC. 8409. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or any thing which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order; or to the order of the court in which the defendant may be tried.

CHAPTER IV.

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8423. Person arrested, when to be discharged.
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8425. Fugitives from this Territory. Accounts of persons employed in procuring surrender, to be paid out of the Territorial Treasury.
8426. No fee or reward to be paid to or received by any public officer procuring the surrender of fugitives, etc.

Rewards for apprehension of fugitives. Cr. P., 651, 157.

SECTION 8415. The Governor may offer a reward not exceeding one thousand dollars, payable out of the general fund, for the apprehension:

1. Of any convict who has escaped from the Territorial prison; or,

2. Of any person who has committed, or is charged with the commission of an offense punishable with death.

Fugitives. Cr. P., 652.

SEC. 8416. A person charged in any State or Territory of the United States with treason, felony, or other crime, who flees from justice and is found in this Territory, must, on demand of the executive authority of the State or Territory from which he fled, be delivered up by the Governor of this Territory, to be removed to the State or Territory having jurisdiction of the crime.

Issuing warrant Cr. P., 653.

SEC. 8417. A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice and is found in this Territory.

Arrest of person charged Cr. P., 654.

SEC. 8418. The proceedings for the arrest and commitment of a person charged, are, in all respects similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this Territory, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State or Territory in which he is charged to have committed the offense, may be received as evidence before the magistrate.

When and for what time to be committed. Cr. P., 655.

SEC. 8419. If from the examination, it appear that the accused has committed the crime alleged, the magistrate by warrant reciting the accusation, must commit him to the proper custody in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable to enable the arrest of the fugitive under the warrant of the executive of this Territory, on the requisition of the executive authority of the State or Territory in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

Admission to bail. Cr. P., 656.

SEC. 8420. The magistrate may admit the person arrested to bail by an undertaking with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the Governor of this Territory.

Magistrate to give notification. Cr. P., 657.

SEC. 8421. Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the District Attorney of the county.

Duty of district attorney. Cr. P., 658.

SEC. 8422. The District Attorney must immediately thereafter give notice to the executive authority of the State or Territory, or to the Prosecuting Attorney or presiding Judge of the court of the city or county within the State or Territory, having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

Person arrested, when discharged. Cr. P., 659.

SEC. 8423. The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the Governor of this Territory.

Magistrate to return proceedings, where. Cr. P., 660.

SEC. 8424. The magistrate must return his proceedings to the next District Court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time for his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be cancelled, or may continue his detention for a longer time, or readmit him to bail, to appear and surrender himself within a time to be specified in the undertaking.

Fugitives from this Territory. Accounts, by whom audited, N. S.

SEC. 8425. When the Governor of this Territory, in the exercise of the authority conferred by Section 2, Article IV, of the Constitution of the United States, or by the laws of this Territory, demands from the executive authority of any State or Territory of the United States, or of any foreign government, the surrender to the authorities of this Territory, of a fugitive from justice, who has been found and arrested in such State, Territory, or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the Controller and paid out of the Territorial treasury.

Public officers no reward, etc. N. S.

SEC. 8426. No compensation, fee, or reward of any kind can be paid to, or received by, a public officer of this Territory, or other person, for a service rendered in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this Territory, or detaining him therein, except as provided for in such section.

TITLE XIII.

PROCEEDINGS FOR BRINGING PERSONS IMPRISONED IN THE TERRITORIAL PRISON, OR THE JAIL OF ANOTHER COUNTY, BEFORE A COURT.

SECTION
8435. Persons imprisoned in Territorial prison, etc., how brought before court.

Imprisonment in foreign jail, etc., how brought before Court.
Cr. P. 669.

SECTION 8435. When it is necessary to have a person imprisoned in the Territorial prison brought before any Court, or a person imprisoned in a county jail brought before a Court sitting in another county, an order for that purpose may be made by the Court and executed by the Sheriff of the county where it is made.

TITLE XIV.

DISPOSITION OF FINES AND FORFEITURES. COSTS.

SECTION
8440. Fines and forfeitures, disposition of.

SECTION
8441. Costs, judgment for against defendant. Paid into the county treasury.

Fines and forfeitures.

SECTION 8440. Except in cases wherein it is otherwise expressly authorized by law, all fines and forfeitures collected in any court must, without any deduction of costs, be paid into the county treasury of the county in which the court is held.

Costs taxed against defendant.
14 ses.

SEC. 8441. At the close of every trial for any offense against the laws of this Territory, the costs thereof shall be paid as by law provided, but by way of indemnity to the county the whole amount of such costs including the costs of examination if such shall have been had, in cases wherein the accused is convicted shall be taxed against the convicted person, and judgment shall be rendered accordingly by the Court before which such person shall have been convicted and such judgment may be enforced in the same manner as judgments in civil cases.

Paid into county treasury.

All moneys realized on such judgments for costs in criminal cases shall be paid into the current expense fund of the county in which such conviction shall be made, in the same manner as moneys received for fines are paid into the county school fund. [Act Feb. 10, 1887.]

PART III.—OF THE TERRITORIAL PRISON AND COUNTY JAILS.

TITLE I.

OF THE TERRITORIAL PRISON.

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Territorial prison.
11 ses., 304.

SECTION 8500. The penitentiary building erected and conducted by the United States, in the county of Ada, is the Territorial prison of the Territory of Idaho, wherein must be confined for reformation and punishment, and employed at hard labor, all offenders convicted and sentenced according to law to imprisonment in the Territorial prison; and all persons convicted of crime against the laws of this Territory and sentenced to confinement in the Territorial prison, must be sentenced to hard labor during the term of their confinement, and must perform such labor under such rules and regulations as may be prescribed by the Governor of the Territory, the United States Marshal and the Territorial Treasurer; and they may make regulations for working prisoners outside of the prison walls between sunrise and sunset.

Contract for keeping.
11 ses., 304.

SEC. 8501. The Governor and Treasurer may contract and arrange, on the part of the Territory, to and with the United States, for the reception and keeping of all Territorial prisoners.

Monthly settlements.
11 ses., 304.

SEC. 8502. At the close of each month the Governor must certify to the Territorial Controller, the sum due the United States, in lawful money, for the keeping, boarding, clothing, washing, and medical attendance of the Territorial prisoners, for such month, and if there be sufficient money in the Territorial treasury, not required for the payment of the principal or interest of the bonded debt of the Territory, the Controller must, upon such certificate of the Governor, draw his warrant upon the Territorial treasury, in favor of the United States Marshal, for the amount so certified, and the Treasurer must pay the same; but if there be not sufficient money in the treasury, applicable thereto, the Controller must advertise in some newspaper published at the capital of the Territory, that sealed proposals for Territorial warrants for the amount due the United States, in lawful money, for keeping Territorial prisoners, will be received by him until twelve o'clock, noon, of a day named, which must not be less than five days from the first publication of said notice; and the Controller must, at the time named, open said bids in a public manner, in the presence of the Territorial Treasurer, and they may reject any or all of said bids, and re-advertise, if they consider the bids too low, otherwise the Controller must draw his warrant upon the treasury in favor of the person making the highest bid, and deliver said warrant to the highest bidder, on receipt of the money therefor, and he must pay said money to the United States Marshal upon his receipting his account.

When county jail becomes Territorial prison. 9 ses., 18.

SEC. 8503. Where a sentence of imprisonment in the Territorial prison does not exceed one year, the jail of the county where the prisoner is tried, or of an adjoining county, may be deemed the Territorial prison, and such prisoner may be sentenced to imprisonment therein; *Provided*, The Sheriff of the county in which such jail is situated, files with the Clerk of the Court before which the prisoner is tried, an offer to keep such prisoners at the same rates paid by the Territory at the general Territorial prison; and in such case such Sheriff is the lawful keeper of such prisoners and for a breach of such duty is liable in all respects as for the safe keeping of prisoners sentenced to imprisonment in the county jail, and his accounts for keeping such prisoners must be audited and paid in the same manner and at the same rates as the accounts for keeping prisoners at the prison mentioned in the first section of this Title.

Fees for delivery of prisoners. 11 ses., 305.

SEC. 8504. All persons sentenced to imprisonment in the Territorial prison, unless retained in the county jails as provided in the last section, must be delivered by the Sheriff of the proper county, or his deputy, to the person in charge of said prison, and the officer delivering such prisoners must receive the following compensation, and no more, for such services, to wit: For conveying, guarding, and boarding one prisoner, thirty-five cents per mile, one way, for each mile actually and necessarily traveled, and for such additional prisoner, ten cents per mile; and it is the duty of the Governor, Controller and Treasurer, or any two of them, to audit said accounts, and the Controller must draw his warrant upon the Territorial treasury for the amount and deliver the same to the officer entitled thereto, and the Treasurer must pay the same.

Commutation of sentence. 13 ses., 151.

SEC. 8505. Every convict imprisoned in the Territorial prison and who has no infraction of the rules or regulations of the penitentiary recorded against him, and who performs in a faithful manner the duties assigned to him, in an orderly and peaceable manner, must be allowed as commutation of his sentence, a deduction of one month for the first year, two months for the second year, three months for the third year, four months for the fourth year, five months for the fifth year, and six months in each of the remaining years of said term. But if any convict escapes or attempts to escape, from any prison, or commits an assault upon his keeper or any foreman, officer or convict, or otherwise endangers life, he forfeits and loses any and all deductions from the time of his sentence to which he may have been entitled before the commission of such offense.

Forfeiture of commutation. 13 ses., 151

SEC. 8506. In case any convict who has become entitled to any deductions from the time of his sentence as aforesaid, is guilty of any willful violation of any of the rules and regulations of the prison, he forfeits, if entitled to so much, for the first offense two days; for the second offense four days; for the third offense eight days; and for the fourth offense sixteen days; and in addition thereto, whatever number of days more than one, that he is in punishment are also forfeited; for more than four offenses the warden has power to deprive him, at his discretion, of any portion or all the deduction that the convict may have earned, but not less than as provided for the fourth offense.

SEC. 8507. For the purpose of commutation, whenever any convict has been committed under several convictions with separate sentences, they must be construed as one continuous sentence.

Separate sentences. 13 ses., 152.

SEC. 8508. If a convict passes the entire period of his sentence without any violation of the rules and regulations, he is entitled to a certificate thereof from the warden, and on presenting it to the Governor, he may be restored to citizenship at the discretion of the Governor.

Restored to citizenship. 13 ses., 152.

SEC. 8509. When any convict is discharged from the penitentiary he must be furnished the sum of fifteen dollars. Upon exhibiting his discharge to the Governor, the Governor must certify the same to the Controller, who must thereupon draw his warrant on the general fund in the Territorial treasury in favor of such discharged convict for said amount.

Bounty. 13 ses., 152.

SEC. 8510. That the sum of seventy-five dollars per annum be appropriated out of any moneys in the Territorial treasury, not otherwise appropriated, to the warden of the Territorial prison of Idaho Territory, to purchase suitable books for a library for the use of the prisoners in said prison.

Purchase of books for Territorial prisoners. 14 ses.

SEC. 8511. The warden to report to the Governor thirty days before the meeting of the Legislature, the number and kind of books purchased each year, and the prices paid therefor, the condition of the library, and the effect upon the conduct, mental improvement and morals of the prisoners by reason of the establishment of such library.

Warden to report. 14 ses.

SEC. 8512. The Controller is authorized to draw his warrant on the Treasurer for the sum of seventy-five dollars each year in favor of the warden of the prison, and the Treasurer is required to pay the same out of any funds not otherwise appropriated.

Warrant each year. 14 ses.

[Act Feb. 10, 1887.]

TITLE II.

OF COUNTY JAILS.

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8547. Expense of keeping, how paid.

County jails, by whom kept, purpose of. Comp. laws, 546.

SECTION 8525. The common jails in the several counties of this Territory are kept by the Sheriffs of the counties in which they are respectively situated, and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases;
2. For the detention of persons charged with crime and committed for trial;
3. For the confinement of persons committed for a contempt, or upon civil process, or by other authority of law;
4. For the confinement of persons sentenced to imprisonment therein upon a conviction for crime.

Rooms required in county jails. Comp. laws, 547.

SEC. 8526. Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial;
2. Persons already convicted of crime and held under sentence;
3. Persons detained as witnesses or held under civil process, or under an order imposing punishment for a contempt;
4. Males separately from females.

Prisoners to be classified. Comp. laws, 541.

SEC. 8527. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife), be kept or put in the same room.

Prisoners committed must be actually confined. Comp. laws, 549.

SEC. 8528. A prisoner committed to the county jail for trial or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged; and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

Sheriff must receive prisoners committed by U. S. courts. Comp. laws, 551 [805].

SEC. 8529. The Sheriff must receive and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this Territory; provision being made by the United States for the support of such prisoner.

Sheriff answerable for safe-keeping. Comp. laws, 561.

SEC. 8530. A Sheriff to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe-keeping in the courts of the United States, according to the laws thereof.

When jail of a contiguous county may be used. Comp. laws, 547.

SEC. 8531. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the Probate Judge may, by a written appointment filed with the County Recorder, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment.

Keeper of jail in contiguous county to receive prisoners. Comp. laws, 547.

SEC. 8532. A copy of the appointment, certified by the County Recorder, must be served on the Sheriff or keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the last section, and who is responsible for the safe keeping of the persons so committed, in the same manner and to the same extent as if he was Sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he is deemed the Sheriff of the county from which they were removed.

When jail in contiguous county to cease to be used. Comp. laws, 547.

SEC. 8533. When a jail is erected in the county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the Probate Judge of that county must, by a written revocation, filed with the County Recorder thereof, declare that the necessity for the designation has ceased, and that it is revoked.

Prisoners to be returned to proper county. Comp. laws, 548.

SEC. 8534. The County Recorder must immediately serve a copy of the revocation upon the Sheriff of the county, who must thereupon remove the prisoners to the jail of the county from which the removal was had.

Prisoners, removal of, in case of fire. Comp. laws, 546.

SEC. 8535. When a county jail or a building contiguous to it is on fire, and there is reason to apprehend that the prisoners may be injured or endangered, the Sheriff or Jailer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

Prisoners, removal of, in case of pestilence. Comp. laws. 546.

SEC. 8536. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the Probate Judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the County Recorder and authorize the Sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

Papers served on jailer for prisoner. Comp. laws, 548.

SEC. 8537. A Sheriff or Jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

Guard for jail. Comp. laws, 548.

SEC. 8538. The Sheriff, when necessary, may, with the assent in writing of the Probate Judge, or in a city, of the Mayor thereof, employ a temporary guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which are a county charge.

Sheriff to receive all persons duly committed. Comp. laws, 548.

SEC. 8539. The Sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation to be determined by the Board of Commissioners, and, except as provided in the next section, to be paid out of the County Treasury.

Prisoners on civil process, when not to be received. C. C. P., 794, Comp. laws, 549.

SEC. 8540. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this Territory are a party thereto, the Sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

Prisoners may be required to labor. Act Jan. 14, 1869.

SEC. 8541. Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding, may be required by an order of the Board of Commissioners to perform labor on the public works or ways in the county.

Rules, etc., for the performance of labor. N. S.

SEC. 8542. The Board of Commissioners making such order may prescribe and enforce the rules and regulations under which such labor is to be performed.

Commissioners to have care of, etc. 8 ses., 804.

SEC. 8543. The County Commissioners must inspect the county jail, and once every three months, inquire into the state thereof as respects the security thereof, treatment and condition of the prisoners, and take all necessary precaution against escape, sickness or infection.

Jailer to return list of prisoners, when failure, penalty. 8 ses., 805.

SEC. 8544. Every Jailer, five days prior to the opening of each term of the District Court, in his county, must return to the Clerk of the Board of Commissioners of his county a certified list of all the prisoners there in his custody, with the time and causes of their confinement, and the length of the term for which they were committed, and he must also return to said clerk, within five days after the close of said court, the name and cause, and term of commitment of every prisoner committed during said term of court; and any Jailer, who neglects to make such return, for every such neglect must pay a fine not exceeding fifty nor less than twenty dollars, to be imposed at the next succeeding term of said court, on information of said commissioners of such neglect.

Imprisonment for fine. 8 ses., 806.

SEC. 8545. Whenever any prisoner, under conviction for any criminal offense, is confined in any jail for nonpayment of any fine, the District Court, upon satisfactory evidence of such inability, may, in lieu thereof, confine such person in the county jail at the rate of two dollars per day until the fine imposed is satisfied.

Governor may order removal of prisoners, when. 8 ses., 806.

SEC. 8546. Whenever, from any sufficient cause, the Sheriff considers it expedient that a prisoner be removed from the jail of his county, on application in writing to the

Governor of the Territory, by the Sheriff and Commissioners of such county, the Governor may order such prisoner to be removed to some other jail within the Territory, there to be detained in the same manner and by the same process as in the jail from whence they were removed, until remanded back, by a similar process, or discharged according to law.

Expense of keeping, how paid. 8 ses., 806.

SEC. 8547. All the expense of removing and maintaining prisoners, incurred under the preceding section, must be defrayed by the county from which they were so removed.

[Approved January 11, 1887.]

CERTIFICATE.

EXECUTIVE DEPARTMENT, IDAHO TERRITORY.
OFFICE OF THE TERRITORIAL SECRETARY.

I, Edward J. Curtis, Secretary of the Territory of Idaho, do hereby certify that the foregoing printed volume of the Revised Statutes is a true and complete copy of the general laws passed at the Fourteenth Session of the Legislative Assembly of Idaho Territory, convened at Boise City, on the 13th day of December, 1886, and adjourned on the 10th day of February, A.D. 1887, as the same remain on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the great seal of the Territory.

Done at the capitol in Boise City, this ninth day of April, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the one hundred and eleventh.

E. J. Curtis,

Secretary of Idaho.

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